

California Commission on Health and Safety and Workers' Compensation

2004 Annual Report

**California State Department
Of Industrial Relations**

December 2004

2004 by the California Department of Industrial Relations

All rights reserved

Ordering Information

Copies of this publication, reports, videos, and other instructional materials are available at no charge. Orders may be sent to the California Department of Industrial Relations, Commission on Health and Safety and Workers' Compensation (CHSWC), 1515 Clay Street, Room 901, Oakland, CA 94612; Telephone: (510) 622-3959; FAX (510) 622-3265; EMAIL: chswc@dir.ca.gov; Website: www.dir.ca.gov/chswc.

TABLE OF CONTENTS

COMMISSION ON HEALTH & SAFETY & WORKERS' COMPENSATION	1
INTRODUCTION	1
Background	1
Research Approach	1
Research Leads to Policy Changes	1
ABOUT CHSWC	2
CHSWC MEMBERS REPRESENTING EMPLOYERS	3
Alfonso R. Salazar	3
Kristen Schwenkmeyer	3
Robert B. Steinberg	4
John C. Wilson	4
CHSWC MEMBERS REPRESENTING LABOR	5
Allen Davenport	5
Leonard McLeod	5
Tom Rankin	6
Darrel 'Shorty' Thacker	6
CALIFORNIA HEALTH AND SAFETY AND WORKERS' COMPENSATION FUNCTIONS	7
CHSWC RECOMMENDATIONS	8
EVALUATION OF RECENT REFORMS	8
MEDICAL ISSUES	8
BENEFIT DELIVERY	9
Permanent Disability Rating Schedule	9
Temporary Disability Benefits	9
Apportionment	10
RETURN TO WORK	10
EXPLORING FUTURE DIRECTIONS	10
Examine the Integration of Medical and Indemnity Benefits	10
24-Hour Care	11
Carve-outs	11
Anti-fraud Efforts	11
Stabilize the Workers' Compensation Insurance Market and Reduce Workers' Compensation Costs and Premium Rate to Employers	12
Injury Prevention	12
WOSHTEP	12
Workers' Compensation and Public Safety Officer Retirement	12
Understanding Occupational Risks at Small Firms	12
Combining Occupational Injury Reduction Efforts with Health Promotion Programs	13
Improve Efficiency of Administration	13
SPECIAL REPORT: 2004 WORKERS' COMPENSATION REFORMS	14
SENATE BILL 899 AUTHOR, CO-AUTHORS, AND STAFF	14
FUNDING	14
INTEGRATED BENEFITS IN CARVE-OUTS	14
LIBERAL CONSTRUCTION	14
PROVISION OF MEDICAL BENEFITS	15

TABLE OF CONTENTS

Repeal of Treating Physician's Presumption.....	15
Medical Treatment Defined and Predesignation of Physician	15
Medical Billing.....	16
Treatment Guidelines	16
Medical Networks	16
Economic Profiling of Providers in Medical Network	17
Community Care after Provider Leaves Network	17
Patient Rights in Networks	17
Independent Medical Review to Resolve Dispute with Network.....	17
Organizations Deemed Approved by Networks.....	18
Early Medical Treatment.....	18
Admissible Evidence	19
Agreed Medical Evaluator/Qualified Medical Evaluator.....	19
Qualified Medical Evaluator System and Report Writing	19
Agreed Medical Evaluator/Qualified Medical Evaluator and Dispute Resolution	19
Educational Materials for Treating Physicians.....	20
VOCATIONAL REHABILITATION	20
Supplemental Job Displacement Benefit.....	20
PAYMENT OF BENEFITS.....	20
Timing of Payments.....	20
Temporary Disability Limited to Two Years	20
PERMANENT DISABILITY.....	21
Permanent Disability Indemnity Chart, Including Tiered Permanent Disability Benefit	21
Return-to-work Adjustment	21
Effective Date.....	21
Definition of Modified and Alternate Work	22
Permanent Disability Rating Schedule	22
RETURN-TO-WORK INCENTIVES	22
Return-to-work Reimbursements for Worksite Modifications	22
APPORTIONMENT	22
Labor Code Sections 4750 and 4750.5 Repealed.....	23
LIEN FILING FEE	23
PENALTIES.....	23
Private Attorneys General Exception.....	23
Penalty for Unreasonable Delay.....	23
Penalty for General Business Practice of Delays	24
INJURY AND ILLNESS PREVENTION.....	24
Injury and Illness Prevention Program.....	24
FRAUD	24
Fraud Reporting.....	24
REFORM IMPACT.....	24
Study of Effects of Reform.....	24
DIVISION OF WORKERS' COMPENSATION REGULATORY ACTION PURSUANT TO WORKERS' COMPENSATION REFORM LEGISLATION .	25
Assembly Bill 749	25
Assembly Bill 227 and Senate Bill 228 – Fee Schedules	27
Assembly Bill 227 and Senate Bill 228 – Other Mandates	30
Senate Bill 899	32
DIVISION OF WORKERS' COMPENSATION 2004 RULEMAKING CALENDAR – OTHER THAN REFORM REGULATIONS.....	35
SPECIAL REPORT: PERMANENT DISABILITY HISTORY	37
INTRODUCTION	37
KEY FINDINGS FROM THE CHSWC STUDY BY RAND.....	37

TABLE OF CONTENTS

RESULTS FROM THE CHSWC STUDY BY RAND	37
REVISED PERMANENT DISABILITY SCHEDULE: PROVISIONS OF SENATE BILL 899.....	38
Revised Permanent Disability Schedule.....	38
Return-to-work Incentives: Tiered Permanent Disability System	38
HISTORY OF THE CHSWC STUDIES ON PERMANENT DISABILITY.....	39
Background	39
Methodology for Evaluating the Permanent Disability System	39
Wage Loss	39
<i>Graphic: Wages, Losses and Replacement Rates.....</i>	<i>39</i>
Adequacy	40
Equity	40
CHSWC STUDY OF PERMANENT DISABILITY – PHASE 1	40
CHSWC STUDIES BY RAND SUPPORTED INCREASES IN PERMANENT DISABILITY BENEFITS ADDRESSED BY ASSEMBLY BILL 749..	40
CHSWC STUDY OF PERMANENT DISABILITY – PHASE 2	41
CHSWC STUDIES BY RAND ADDRESS IMPORTANT QUESTIONS	41
Analysis of Wage Loss and Return to Work in Other States.....	41
<i>Graphic: Percentage of PPD Claimants Out of Work After 3 Years.....</i>	<i>41</i>
Permanent Disability Rating Tool Study	42
NEXT STEPS.....	42
SPECIAL REPORT: CAUSATION AND APPORTIONMENT	43
INTRODUCTION	43
CALIFORNIA LAW ON CAUSATION AND APPORTIONMENT	43
Causation	43
Apportionment	44
DIFFERENT MODELS OF STATES’ LAWS RELATING TO COMPENSABILITY AND APPORTIONMENT	45
CHSWC STUDY RECOMMENDATIONS	45
SENATE BILL 899 PROVISIONS RELATING TO CAUSATION AND APPORTIONMENT.....	45
NEXT STEPS.....	46
SPECIAL REPORT: ASSESSMENT OF 24-HOUR CARE OPTIONS FOR CALIFORNIA.....	47
BACKGROUND	47
PRELIMINARY FINDINGS	47
ISSUES RAISED BY STAKEHOLDERS.....	49
GENERAL RECOMMENDATIONS.....	49
SPECIFIC RECOMMENDATIONS	50
NEXT STEPS.....	50
SPECIAL REPORT: CALIFORNIA INSURANCE GUARANTEE ASSOCIATION.....	51
PURPOSE.....	51
BACKGROUND	51
CALIFORNIA INSURANCE GUARANTEE ASSOCIATION ASSESSMENTS AND DEDUCTIBLES	52
<i>Graphic: California WC Written Premium.....</i>	<i>53</i>
<i>Graphic: California WC Deductibles.....</i>	<i>53</i>
<i>Graphic: California WC Deductibles as % of Written Premium</i>	<i>54</i>
<i>Graphic: California WC Written Premium and Deductibles</i>	<i>54</i>
<i>Graphic: California WC Written Premium and Deductible Percentage Growth.....</i>	<i>55</i>
ESTIMATED SAVINGS	55
INFORMATION FROM OTHER STATES.....	56

TABLE OF CONTENTS

RECOMMENDATIONS	56
UPDATE: THE CALIFORNIA WORKERS' COMPENSATION INSURANCE INDUSTRY.....	58
BACKGROUND	58
Minimum Rate Law	58
INSURANCE MARKET BEFORE REFORM	59
INSURANCE MARKET AFTER REFORM	59
Price Competition	59
Changing Insurers	60
Reinsurance	60
PROFITABILITY OF INSURANCE COMPANIES.....	60
Workers' Compensation Premiums	60
Graphic: Workers' Compensation Written Premium.....	61
CALIFORNIA WORKERS' COMPENSATION RATE CHANGES.....	61
Advisory Workers' Compensation Pure Premium Rates: A History Since the 1993 Reform Legislation	63
Combined Loss and Expense Ratios	65
Graphic: Combined Loss and Expense Ratios.....	65
Under-reserving.....	65
Average Claim Costs	66
Graphic: Estimated Total Loss per Indemnity Claim 1993 - 2003	66
CURRENT STATE OF THE INSURANCE INDUSTRY	66
Market Share	66
Graphic: California WC Market Share by Type of Insurer	67
September 11 Impact on Insurance Industry.....	67
INSURANCE MARKET INSOLVENCY	67
Listing: Insurers Liquidated since 2000	68
WORKPLACE SAFETY AND HEALTH.....	69
HIGH HAZARD PROGRAMS	69
High Hazard Employer Program.....	69
High Hazard Consultation Program.....	69
Graphic: High Hazard Consultation Program Production by Year	70
High Hazard Enforcement Program	70
Graphic: High Hazard Enforcement Program Inspections and Violations.....	71
NON-FATAL INJURY AND ILLNESS RATES IN CALIFORNIA	71
Graphic: OSHA Injury and Illness Rates in California 1985-2002	72
Graphic: Occupational Injury and Illness Rates in California by Sector	72
Graphic: Lost Time Injury and Illness Rates in California by Sector	73
Non-fatal Occupational Injuries and Illness Days-away-from-work Rates by Industry	73
Graphic: Injury Rates by Industry 1996 v 2002	73
Profile of Injury and Illness Statistics	74
California and the Nation.....	74
Incidence Rates	74
Duration	74
Industry Data.....	74
Non-fatal and Fatal Occupational Injuries by Establishment Size and Type.....	75
Types of Injuries	75
Demographics	76
ERGONOMICS STANDARD.....	77
California Standard.....	77
Federal Standard.....	78
Ergonomics Standard in California: A Brief History	79

TABLE OF CONTENTS

SPECIAL REPORT: WORKER OCCUPATIONAL SAFETY AND HEALTH TRAINING AND EDUCATION PROGRAM	82
BACKGROUND	82
PURPOSE AND OBJECTIVES	82
FUNDING	83
PROJECT TEAM	83
LABOR-MANAGEMENT ADVISORY BOARD.....	83
WOSHTEP ACCOMPLISHMENTS	83
Needs Assessment.....	83
Curriculum Development	83
CORE CURRICULUM	84
SUPPLEMENTAL MODULES.....	84
PILOTS.....	84
RESOURCE LIBRARY	84
WEBSITE.....	85
DATABASE	85
FUTURE PLANS	85
Training.....	85
WOSHTEP Trainers	85
Delivery Structure	85
Employer Participation.....	85
Development of Small Business Model	86
Training Materials in Other Languages and Multilingual Materials	86
Evaluation Plan.....	86
Strategic Plan	86
SPECIAL REPORT: KEEPING CALIFORNIA'S YOUTH SAFE ON THE JOB	87
PURPOSE OF THE CALIFORNIA PARTNERSHIP FOR YOUNG WORKER HEALTH AND SAFETY	87
ACCOMPLISHMENTS.....	87
UPDATING RECOMMENDATIONS.....	88
KEY RECOMMENDATIONS.....	89
PRIORITY WORK AREAS – SHORT TERM.....	90
PRIORITY WORK AREAS – LONG TERM.....	90
WORKERS' COMPENSATION SYSTEM PERFORMANCE	92
INTRODUCTION	92
ADMINISTRATIVE OPERATIONS	93
Division of Workers' Compensation Opening Documents.....	93
Graphic: DWC Opening Documents	93
Mix of Opening Documents	94
Graphic: DWC Opening Documents as Percentage of Total	94
Division of Workers' Compensation Hearings	94
Number of Hearings	94
Graphic: DWC Hearings Held	95
Timeliness of Hearings.....	95
Graphic: Elapsed Time in Days from Request to DWC Hearing	96
Division of Workers' Compensation Decisions	96
Division of Workers' Compensation Case-closing Decisions	96
Graphic: DWC Case Closing Decisions	97
Mix of Division of Workers' Compensation Decisions	97

TABLE OF CONTENTS

<i>Graphic: DWC Decisions: Percentage Distribution by Type of Decision</i>	98
Division of Workers' Compensation Lien Decisions.....	98
<i>Graphic: DWC Decisions on Liens</i>	99
Vocational Rehabilitation Decisions.....	100
Vocational Rehabilitation Plan Approvals and Disapprovals.....	100
<i>Graphic: Vocational Rehabilitation Plan Approvals</i>	100
<i>Graphic: Vocational Rehabilitation Plan Disapprovals</i>	100
Vocational Rehabilitation Decisions and Orders after Conference.....	101
<i>Graphic: Vocational Rehabilitation Decisions and Orders after Conference</i>	101
DIVISION OF WORKERS' COMPENSATION AUDITS	102
Calculation of Profile Audit Review Performance Ratings.....	102
2003 Audit Results.....	103
Violations of the Administrative Director's Regulations.....	104
Unpaid Compensation Due to Employees.....	104
Frequency of Violations.....	105
<i>Unpaid Indemnity</i>	105
<i>Late First Payment of Temporary Disability or Salary Continuation</i>	105
<i>Late First Payment of Permanent Disability, Vocational Rehabilitation and Death Benefits</i>	105
<i>Late Subsequent Indemnity Payments</i>	105
<i>Failure or Late Provision of Agreed Medical Evaluator/ Qualified Medical Evaluator and Vocational Rehabilitation Notices</i>	106
Performance Ratings of Audit Subjects.....	106
Profile Audit Review and Full Compliance Audit Standards Comparison.....	106
Appeals of Audits.....	107
Civil Penalties.....	107
Civil Penalty Under Pre-2003 LC Section 129.5(d).....	107
Civil Penalty Under Pre-2003 Labor Code Section 129.5(e).....	107
Regulatory Activity.....	108
Staffing Problems/Backlogs.....	108
DISABILITY EVALUATION UNIT	109
INFORMATION AND ASSISTANCE UNIT	109
DIVISION OF WORKERS' COMPENSATION STAFFING	109
ADJUDICATION SIMPLIFICATION EFFORTS	110
Division of Workers' Compensation Information System.....	110
Carve-outs - Alternative Workers' Compensation Systems.....	111
Impact of Senate Bill 228.....	112
Impact of Senate Bill 899.....	113
Carve-out Participants as of June 8, 2004.....	113
<i>Table: Non-construction Industry Carve-out Participants</i>	113
<i>Table: Construction Industry Carve-out Participants</i>	114
COSTS	115
Workers' Compensation Premium.....	115
Workers' Compensation Total Earned Premium.....	115
<i>Graphic: Workers' Compensation Total Earned Premium</i>	115
Workers' Compensation Written Premium.....	116
<i>Graphic: Workers' Compensation Written Premium</i>	116
Average California Workers' Compensation Premium Rate Per \$100 of Payroll.....	116
<i>Graphic: Average WC Premium Rate per \$100 of Payroll</i>	117
Workers Covered by Workers' Compensation Insurance.....	117
<i>Graphic: Workers Covered by WC Insurance</i>	117
Workers' Compensation Expenditures – Insured Employers.....	118
Indemnity Benefits.....	118
<i>Table: System-wide Estimated Costs of Paid Indemnity Benefits</i>	119
<i>Graphic: Indemnity Benefits Paid by Insured Employers - 2002</i>	120

TABLE OF CONTENTS

<i>Graphic: Indemnity Benefits Paid by Insured Employers - 2003</i>	120
Medical Benefits	121
<i>Table: System-wide Costs – Medical Benefits</i>	121
<i>Graphic: Medical Benefits Paid by Insured Employers-2002</i>	122
<i>Graphic: Medical Benefits Paid by Insured Employers-2002</i>	122
Average Cost per Claim by Type of Injury	123
<i>Graphic: Average Cost per Claim by Type of Injury</i>	123
Workers' Compensation Expenditures - Private Sector Self-insured Employers	124
<i>Graphic: Employees of Private Sector Self-insured Employers</i>	124
<i>Graphic: Indemnity Claims per 100 Employees of Self-Insured Employers</i>	124
<i>Graphic: Incurred Cost per Indemnity Claim</i>	125
<i>Graphic: Incurred Cost per Claim – Indemnity and Medical</i>	125
Vocational Rehabilitation Costs	126
<i>Graphic: Voc Rehab Costs compared with Total Incurred Losses</i>	126
<i>Graphic: Voc Rehab Costs as Percent of Total Incurred Losses</i>	126
FRAUD	127
Suspected Fraudulent Claims	128
Workers' Compensation Fraud Suspect Arrests	129
Workers' Compensation Fraud Suspect Convictions	129
Types of Workers' Compensation Fraud Investigations	130
Potential Areas for Improvement in Workers' Compensation Anti-fraud Efforts	130
CHSWC Anti-fraud Recommendations	131
MEDICAL-LEGAL ISSUES	132
Treating Physician Presumption	132
Background	132
Impact of Assembly Bill 749	133
Impact of Senate Bill 228	133
Medical-legal Expenses	134
Permanent Disability Claims	134
<i>Graphic: PPD Claims at Insured Employers</i>	134
Medical-legal Examinations per Claim	135
<i>Graphic: Medical-Legal Exams Per WC Claim</i>	135
<i>Graphic: Average Medical-legal Reports Per Claim by Region</i>	136
Cost per Medical-legal Examination	136
<i>Graphic: Average Cost of Medical-Legal Exam</i>	137
<i>Graphic: Average Cost of Medical-Legal Exam by Region</i>	137
<i>Graphic: Distribution of Medical-Legal Exam by Type (Southern California)</i>	138
<i>Graphic: Average Number of Psychiatric Exams per PPD Claim by Region</i>	139
Medical-legal Cost Calculation	139
Medical-legal Costs	139
<i>Graphic: Medical-Legal Costs on PPD Claim at Insured Employers</i>	140
Sources of Improvement in Medical-legal Costs	140
<i>Graphic: Sources of Savings: Medical-Legal Costs on PPD Claims 1990-2001</i>	141
CHSWC PROJECTS AND STUDIES	142
INTRODUCTION	142
OVERVIEW OF ALL CHSWC PROJECTS AND STUDIES	143
Permanent Disability	143
Return to Work	144
Workers' Compensation Reforms	145
Occupational Safety and Health	147
Workers' Compensation Administration	148
Information Needs	149
Medical Care	150
Community Concerns	152

TABLE OF CONTENTS

CHSWC Issue Papers	153
CONTINUING AND UPCOMING EFFORTS	154
2002 Reform Mandates	154
2003 Reform Mandates	155
Ongoing Functions	155
New and Continuing Research Focus	155
SYNOPSIS OF CURRENT CHSWC PROJECTS AND STUDIES	156
Permanent Disability	156
Permanent Disability – Phase 1	157
Initial Wage Loss Study	157
Enhancement of the Wage Loss Study to Include Self-insureds	158
Private Self-insureds	158
Public Self-insureds	159
Impact of Local Economic Conditions on Wage Loss	159
Permanent Disability – Phase 2	160
Permanent Disability Rating Tool	161
Return to Work	162
Analysis of Wage Loss and Return to Work in Other States	162
Best Practices Encouraging Return-to-Work	163
Workers' Compensation Reforms	165
Medical-legal Study	165
Update of Treating Physician Presumption Study	166
Court Technology Project	168
Occupational Health and Safety	170
Worker Occupational Safety and Health Training and Education Program	170
Cross-state Comparison of Occupational Injury Rates and Time to Return to Work	172
California Partnership for Young Worker Health and Safety	173
Young Worker Resource Network	175
Photography Exhibit and Teen Workshops	176
Information Needs	179
Carve-Outs: A Guidebook for Unions and Employers	179
Consolidating and Coordinating Information for Injured Workers	181
Medical Care	182
Medical Treatment Study	182
CHSWC/DWC Study on Medical Treatment Protocols	184
CHSWC Study on 24-Hour Care	187
CHSWC Study on Spinal Surgery Second Opinion Process	189
American Medical Association Guides Training Conference	190
Forum on Medical Treatment Guidelines and Workers' Compensation Utilization Protocols	191
Forum on Terrorism and Disaster Preparedness	192
Forum on Best Practices, Integration of Benefits and Carve-outs	193
State Disability Insurance Integration Project	194
CHSWC Issue Papers	196
Cost/Benefit of Implementing Electronic Deposit for Unemployment and Disability Benefits	196
California Insurance Guarantee Association Issue Paper	197
Study of Labor Code Section 132a	198
Information on Industrial Medical Council Disciplinary Actions Taken on Qualified Medical Examiners	198
CHSWC AND THE COMMUNITY	199
HOW TO CONTACT CHSWC	199
CHSWC PUBLICATIONS	199
COMMUNITY ACTIVITIES	199
CHSWC AWARDS	203
ACKNOWLEDGEMENTS	203

COMMISSION ON HEALTH AND SAFETY AND WORKERS' COMPENSATION

Introduction

The California Commission on Health and Safety and Workers' Compensation (CHSWC) is pleased to present the tenth annual report of its activities to improve health and safety and workers' compensation programs affecting all Californians.

Background

CHSWC, a labor-management commission created by the 1993 workers' compensation reform legislation, is charged with overseeing the health and safety and workers' compensation systems in California and with recommending administrative or legislative modifications to improve their operation. CHSWC was established to conduct a continuing examination of the workers' compensation system and of the state's activities to prevent occupational diseases and industrial injuries and to examine those programs in other states.

From its inception in 1994, CHSWC began the process of evaluating the impact of the 1993 workers' compensation reform legislation, a package of bills that made widespread and significant changes to the California workers' compensation system.

CHSWC is pleased to work with all of the workers' compensation community in the common goal of delivering proper benefits to injured workers in a prompt and cost-effective manner.

Research Approach

CHSWC has engaged in several projects and studies to evaluate how certain areas of the California workers' compensation system have been affected by the reform legislation, as well as other influences, such as the economy. CHSWC has directed its efforts to identify and assess problems and to provide an empirical basis for recommendations and/or further investigations. CHSWC contracts with independent researchers to ensure objectivity, incorporate a balance of viewpoints, and produce the highest-quality analysis and evaluation.

Research Leads to Policy Changes

CHSWC proposes recommendations for administrative cost savings and more equitable distribution of benefits to workers. Many of CHSWC recommendations for legislative changes have led to reforms. Several recommendations were incorporated into the 2003 reform legislation, Senate Bill (SB) 228 and Assembly Bill (AB) 227, and the major reforms of 2004 signed by Governor Schwarzenegger.

CHSWC recommendations incorporated into legislative reforms are conservatively estimated to provide savings of approximately \$5 billion annually. We expect an additional one-time savings conservatively estimated at \$5.4 billion. CHSWC recommendations based on new projects are expected to reduce administrative inefficiencies in the workers' compensation system and save an estimated \$280 million to \$2.8 billion.

About CHSWC

The Commission on Health and Safety and Workers' Compensation (CHSWC) oversees the health and safety and workers' compensation systems in California and makes recommendations to improve their operation.

Established in 1994, CHSWC has directed its efforts toward projects and studies to identify and assess opportunities for improvement and to provide an empirical basis for recommendations and/or further investigations. CHSWC utilizes independent researchers with broad experience and highly respected qualifications to carry out research.

CHSWC activities involve the entire health, safety and workers' compensation community. Many individuals and organizations have participated in CHSWC meetings and fact-finding hearings and have served on advisory committees to assist CHSWC on projects and studies.

CHSWC projects deal with several major areas, including cost and utilization issues, streamlining of administrative efficiencies, informational services to injured workers, alternative workers' compensation systems, employers that are illegally uninsured for workers' compensation, the health and safety of young workers, and the impact of the 1993, 2002, 2003, and 2004 workers' compensation reforms.

The most extensive and potentially far-reaching project undertaken by CHSWC is the ongoing study of workers' compensation permanent disability (PD) in California. Incorporating public fact-finding hearings and discussions with studies by RAND, the CHSWC project analyzes major policy issues regarding the way that California workers are compensated for PD incurred on the job.

In its oversight capacity, CHSWC focuses on various aspects of the workers' compensation system in response to concerns raised. These include multi-jurisdictional areas such as anti-fraud activities, as well as various operations of the Division of Workers' Compensation (DWC), such as the judicial function, the lien case workload and the DWC audit program.

At the request of the Legislature, CHSWC has conducted research, issued reports and provided expert testimony on the workers' compensation medical payment system and insurance industry and other critical issues.

CHSWC

Serving all Californians

- Created by the 1993 workers' compensation reform legislation.
- Composed of eight members appointed by the Governor, Senate and Assembly to represent employers and labor.
- Charged with overseeing the health and safety and workers' compensation systems in California and with recommending administrative or legislative modifications to improve their operation.
- Established to conduct a continuing examination of the workers' compensation system and of the state's activities to prevent industrial injuries and occupational diseases and to examine those programs in other states.
- Works with the entire health and safety and workers' compensation community – employees, employers, labor organizations, injured worker groups, insurers, attorneys, medical and rehabilitation providers, administrators, educators, researchers, government agencies, and members of the public.
- Brings together a wide variety of perspectives, knowledge, and concerns about various programs critical to all Californians.
- Serves as a forum whereby the community may come together, raise issues, identify problems, and work together to develop solutions.
- Contracts with independent research organizations for projects and studies designed to evaluate critical areas of key programs. This is done to ensure objectivity and incorporate a balance of viewpoints and to produce the highest-quality analysis and evaluation.

CHSWC Members Representing Employers



Alfonso R. Salazar

Alfonso R. Salazar, founder of ARS Solutions, an information technology firm for government and public-sector projects, was appointed in 2000 to serve as acting undersecretary for the California Technology Trade and Commerce Agency. There he directed programs that stimulated economic activity for international trade and investment, commercialization of new technologies, small business, rural development, tourism, manufacturing, and other California-based industries.

Mr. Salazar is a member of the board of directors of the Latino Issues Forum. He received a Master of Public Policy degree from the University of Michigan and Bachelor of Arts in political science and ethnic studies from the University of California Berkeley. He is a Woodrow Wilson National Fellow and has studied free trade policy at the Universidad de Michoacan in Mexico.

Appointed by: Governor



Kristen Schwenkmeyer

Kristen Schwenkmeyer is secretary-treasurer of Gordon & Schwenkmeyer, a telemarketing firm she started with Mike Gordon in March of 1985. Her primary responsibilities include overall administration of operations, budgeting and personnel for a staff of over 700.

Previously, Ms. Schwenkmeyer served as staff aide to Supervisor Ralph Clark of the Orange County Board of Supervisors and Senator John Glenn in Washington, D.C.

Ms. Schwenkmeyer received a Bachelor of Arts degree in political science from the University of California, Santa Barbara.

Appointed by: Senate Rules Committee

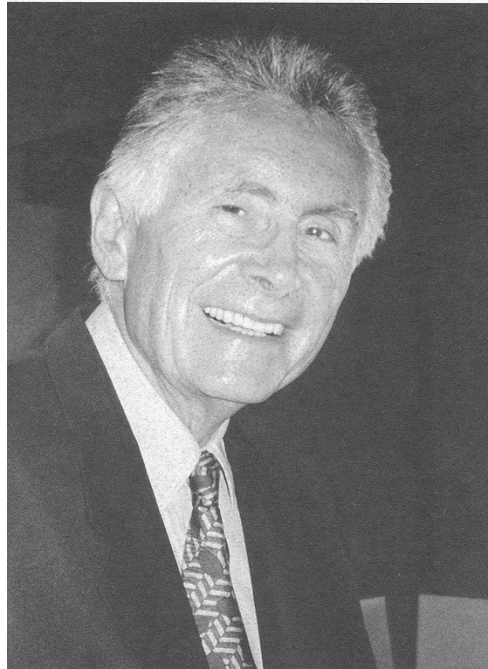
CHSWC Members Representing Employers

Robert B. Steinberg

Robert B. Steinberg is a partner in the law offices of Rose, Klein & Marias and specializes in employee injury, third-party civil damage construction, product liability, asbestos and toxic exposure litigation. He is a fellow of the American College of Trial Lawyers (ACTL), a member of the board of governors Association of Trial Lawyers of America (ATLA), an advocate of the American Board of Trial Advocates (ABOTA), and trustee of the Asbestos Litigation Group (ALG). He is a past president of the California Trial Lawyers (CTLA) (1985) and a past trustee of the Los Angeles County Bar Association (1987).

Mr. Steinberg received law and Bachelor of Science degrees from the University of California, Los Angeles.

Appointed by: Speaker of the Assembly



**John C. Wilson
2005 CHSWC Chair-elect**

John C. Wilson is a contract accreditation consultant to the California Association of Joint Powers Authorities. He retired as the Executive Director of the Schools Excess Liability Fund (SELF) in 2002. Mr. Wilson held positions with several organizations, including the California Chamber of Commerce and the California Coalition on Workers' Compensation. He is a former trustee of the Self-Insurers Security Fund and was a gubernatorial appointee to the Fraud Assessment Commission from 1993 to 1998. In previous employment positions, Mr. Wilson was assistant treasurer and risk manager for Di Giorgio Corporation in San Francisco, California. He was also an industrial hygiene, safety representative and administrator for Rockwell International, Space Division of the self-funded Workers' Compensation Program covering 30,000 employees involved in the Apollo and Saturn II space programs.

Mr. Wilson received his Bachelor of Science degree from the Anderson School of Management, University of California, Los Angeles.

Appointed by: Governor



CHSWC Members Representing Labor



Allen Davenport

Allen Davenport is the director of government relations for the Service Employees International Union California State Council. A union member since 1971, Davenport also was the chief consultant for employment security program -- unemployment insurance, disability insurance, and job training -- on the staff of the state Senate Industrial Relations Committee for seven years.

Mr. Davenport serves on the advisory committee for the workers' compensation information system and was a member of the governing board of the Workers' Compensation Insurance Rating Bureau. He is a former Peace Corps volunteer and a graduate of San Francisco State University.

Appointed by: Speaker of the Assembly



Leonard McLeod

Leonard McLeod is a lieutenant at the California Correctional Training Facility at Soledad and has worked for the Department of Corrections since 1981. He also serves as the early intervention state coordinator/state finance chairman with the California Correctional Peace Officers Association. Previously, he was a police officer with the Watsonville Police Department and a U.S. Army military police sergeant from 1974 to 1978.

Mr. McLeod was a member of the governor's task force on workers' compensation in 1993. He also is a member of the Correctional Peace Officer Foundation and Corrections USA. He is currently a member of the governing board of the Workers' Compensation Insurance Rating Bureau.

Current community activities include serving as a member of the City of Salinas Police Community Advisory Committee, supporting the Salinas Police Activities League, and raising funds for prenatal and health care-related issues.

Appointed by: Governor

CHSWC Members Representing Labor

Tom Rankin
2004 CHSWC Chair

Tom Rankin is the past president of the California Labor Federation, the state AFL-CIO. For many years, he also served as the labor member on the governing committee of the Workers' Compensation Insurance Rating Bureau, which recommends policy premium rates to the state insurance commissioner.

Mr. Rankin's previous employment was as a union representative and organizer. He received his law degree from Boalt Hall School of Law at the University of California, Berkeley.

Appointed by: Senate Rules Committee



Darrel "Shorty" Thacker

Darrel "Shorty" Thacker is the Central District Manager for the Northern California Carpenters' Regional Council. Mr. Thacker also served as the director of field support operations for the Bay Counties District Council of Carpenters and as the Senior Business Representative of Local 22, Carpenters.

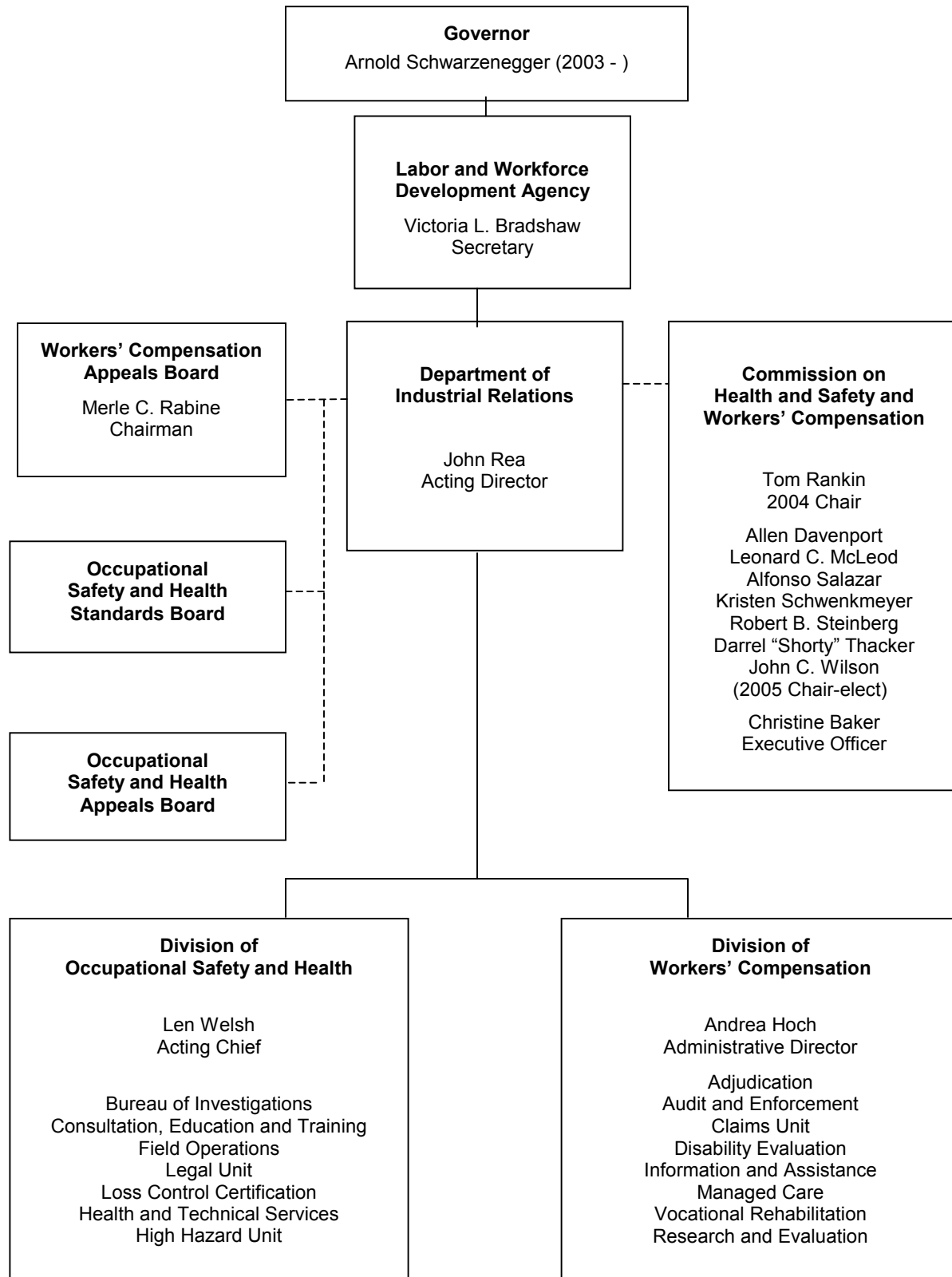
Mr. Thacker joined the Millwrights in 1973, where he worked in construction as a journeyman, foreman, general foreman and superintendent from 1973 to 1978. He also worked as a Millwright business agent from 1978 to 1983.

Following his service as a United States Marine in the Vietnam War, Mr. Thacker earned an Associate's degree in mathematics from Fresno City College in 1970.

Appointed by: Governor



State of California
Health and Safety and Workers' Compensation Functions



CHSWC RECOMMENDATIONS

EVALUATION OF RECENT REFORMS

The Commission on Health and Safety and Workers' Compensation (CHSWC) was established to conduct an ongoing examination of the workers' compensation system and of the state's activities to prevent industrial injuries and occupational diseases and to make recommendations to the Governor and the legislature for improvements. CHSWC has demonstrated through its research, findings, and recommendations that it is important for the Commission to continue to provide oversight and an independent review of the system.

With the passage of the recent workers' compensation reforms, CHSWC recommends continuing evaluation and monitoring of the system to determine whether the goals of the reforms are being realized. CHSWC develops and implements comprehensive and appropriate evaluation measurements so that the impact of the workers' compensation reforms may be tracked and analyzed.

MEDICAL ISSUES

Many reform provisions address medical and medical-legal issues. These include establishing medical networks, using medical treatment utilization guidelines, moving to qualified medical evaluators/agreed medical evaluators (QMEs/AMEs) as sole suppliers of medical-legal reports, and providing early medical treatment for injured workers.

CHSWC recommends measuring and monitoring the impact of reform provisions on medical issues:

- Employer control of medical networks in workers' compensation: access, quality, and cost.
- Use of an AME or a single QME for medical-legal disputes.
- Provision for early medical treatment.
- Evaluation of the medical dispute process.
- Treatment utilization guidelines: impact on cost, access, and quality.

New Labor Code Section 77.5, established by Senate Bill (SB) 228 requires CHSWC to conduct a survey and evaluation of evidence-based, peer-reviewed, nationally recognized standards of care, including existing medical treatment utilization standards, and including independent medical review, as used in other states, at the national level and in other medical benefit systems.

This Labor Code Section also requires CHSWC to issue a report of its findings and recommendations to the AD for purposes of adopting a medical treatment utilization schedule.

CHSWC RECOMMENDATIONS

CHSWC recommends the following course of action regarding the medical treatment guidelines:

- Present RAND report to the AD of the DWC for the AD's consideration.
- Consider RAND findings in the adoption of medical treatment utilization schedule.
- Establish an ad hoc advisory group.
- Conduct further studies jointly by DWC and CHSWC.

BENEFIT DELIVERY

Recent reforms made significant changes in workers' compensation benefit delivery, including temporary disability (TD) and permanent disability (PD) benefits and apportionment of PD.

Permanent Disability Rating Schedule

Senate Bill (SB) 899 revises the current PD rating schedule for the California workers' compensation system. The new schedule, based on the findings from the CHSWC study by RAND, will replace the ratable factor of "diminished ability to compete" with "diminished future earning capacity." In addition, it will also define the "nature of the physical injury or disfigurement" to incorporate the American Medical Association (AMA) Guides for both descriptions and percentage impairments.

CHSWC recommends evaluating the revised PD rating schedule, particularly with respect to the following factors:

- Evaluation of the impact of moving to the American Medical Association (AMA) Guides.
- Ongoing evaluation of wage loss under the new system to allow refinements at the targeted five-year intervals.
- The development of a crosswalk between the injuries in the California Disability Evaluation Unit (DEU) data and the AMA Guides injury descriptions.

Temporary Disability Benefits

SB 899 established a two-year limit on TD indemnity.

CHSWC recommends monitoring and evaluating the impact of:

- Limiting TD benefits in most cases to two years from the date payment commences.
- Extending TD to 240 weeks aggregate within the first five years after date of injury for the following injuries or conditions:
 - Acute and chronic hepatitis B.
 - Acute and chronic hepatitis C.
 - Amputations.
 - Severe burns.
 - Human immunodeficiency virus (HIV).
 - High-velocity eye injuries.
 - Chemical burns to the eyes.
 - Pulmonary fibrosis.
 - Chronic lung disease.

- Evaluating the two-year limit on improved return to work.

Apportionment

The new legislation allows apportionment to causation on the PD award.

CHSWC recommends:

- Evaluating the impact of apportionment on injured workers.
- Determining the impact of apportionment on the medical and legal process.
- Evaluating cost-benefit outcomes of this change.

RETURN TO WORK

A CHSWC study by RAND has found that California's permanent partial disability (PPD) system, when compared to other states, has the lowest return-to-work (RTW) rates and the highest attorney involvement.

Several SB 899 and Assembly Bill (AB) 227 provisions relate to incentives in returning injured workers back to the workplace. The most important reform effort of SB 899 aimed at improving RTW is the 15 percent bump-up/bump-down in PPD benefits. This is potentially a source of substantial savings for employers while also having the potential to improve outcomes for workers. Workers benefit if the incentive improves their chances of returning to the at-injury employer.

In addition, AB 227 provided for a new supplemental job displacement benefit (SJDB), which provides that employees who do not return to work for their at-injury employer within 60 days of the end of the TD period will receive a voucher based on the percentage of the PPD award.

CHSWC recommends updating, evaluating and monitoring changes to RTW programs, including:

- The 15 percent bump-up/bump-down in PD benefits.
- The impact and time frames of the SJDB provision including the provision for vouchers.
- The clarity of the law with respect to the SJDB provision.
- The worksite modification reimbursement.

CHSWC proposes to evaluate the impact and time frames of the SJDB provisions and the clarity of the law.

EXPLORING FUTURE DIRECTIONS

Integration of Medical and Indemnity Benefits

Employers in California experience higher costs for workers' compensation claim medical care than employers in most other states, and California ranks highest in workers' compensation claim premium rates. Suggestions have been made to more closely coordinate or combine workers' compensation medical care with the general medical care provided to patients by group health insurers in order to reduce overall administrative costs and derive other efficiencies.

24-Hour Care

The system of integrating occupational and non-occupational medical and disability systems has been called 24-hour care. In this system, all medical delivery, both occupational and non-occupational, would be through the worker's group health provider for the life of the claim or the length of employment.

A CHSWC study by RAND recommends that policy makers use small-scale pilots to test the 24-hour care models. RAND identified the following key features needed for 24-hour care pilots to be successful at this time in California:

- Ensure that key stakeholders participate.
- Allow flexibility to explore options that work best for employers and insurers.
- Establish authority for care management techniques needed to change care and costs.
- Track effects carefully while allowing cost sharing for work-related care.
- Provide technical support to the pilots for areas where help is needed.

Carve-Outs

Recent reforms have provided that an employer and a union may negotiate any aspect of benefit delivery if employees are eligible for group health benefits and non-occupational disability benefits through the employer.

CHSWC recommends the following: promotion of carve-outs; updating of the evaluation of the success of carve-outs; and evaluation of the establishment of a seamless health and disability system in qualifying carve-outs, without regard to the cause of the sickness or disability.

Anti-fraud Efforts

Currently, while there are commendable anti-fraud efforts in the workers' compensation system, according to the Bureau of State Audits, there seems to be a lack of coordination among agencies carrying out such efforts. There is no cohesive and comprehensive strategic plan for identifying and fighting fraud.

CHSWC recommends:

- Implementing the proposed recommendations from the CHSWC study entitled *Illegally Uninsured Employers*. This would involve matching records between the Employment Development Department (EDD) and the Workers' Compensation Insurance Rating Bureau (WCIRB) and would be an effective method for identifying and bringing into compliance illegally uninsured employers.
- Identifying existing anti-fraud resources that could be used by agencies to detect and monitor fraud.
- Ensuring that part of the budget that goes to the Department of Insurance (DOI) should properly allocate funds for research, sampling, and fraud detection.
- Establishing staffing positions for the Fraud Assessment Commission to ensure increased communication and coordination of efforts.
- Coordinating anti-fraud efforts among agencies.

Stabilize the Workers' Compensation Insurance Market and Reduce Workers' Compensation Costs and Premium Rate to Employers

CHSWC recommends:

- Reviewing the ability of the California Insurance Guarantee Association (CIGA) to assess the deductible portion of a worker's compensation insurance policy with a deductible provision.
- Amending the Labor Code to provide that CIGA would not be responsible for the increased amounts payable on a medical bill that is paid late, if the delay were caused by the insolvent insurer.
- Reviewing the provisions of the Labor Code to provide for the State Compensation Insurance Fund (SCIF) to be excluded from the risk-based capital (RBC) requirements established by the National Association of Insurance Commissioners (NAIC).

Injury Prevention

WOSHTEP

Labor Code Section 6354.7 specifies that CHSWC establish a Worker Occupational Safety and Health Training and Education Program (WOSHTEP).

CHSWC recommends developing a strategic plan for WOSHTEP in consultation with the WOSHTEP Advisory Board.

CHSWC also recommends outreach to small employers.

Workers' Compensation and Public Safety Officer Retirement

"SCIF Retirement Bonus" is a name of the workers' compensation claim filed at the time of retirement so a retiring California Highway Patrol (CHP) officer, firefighter, or police officer can augment retirement benefits with a permanent disability award or settlement.

Members of the community have expressed concern regarding retirement package benefits for public safety officers. Some people have commented that the current system provides incentives for excessive disability claims upon normal retirement.

CHSWC recommends a review of this issue to see how injuries of public safety officers can be prevented and costs can be minimized.

Occupational Risks at Small Firms

Some observers have noted that compliance with OSHA places more burdens on small businesses than on larger ones. As a result, OSHA has made some efforts to give special enforcement treatment to small firms. One problem with deregulating small firms is that they appear to be the least safe. However, the only solid findings regarding the safety of small firms apply to establishment size rather than firm size.

CHSWC recommends considering a study that could help design an information program for small businesses, focusing on the particular causal patterns and violations that have caused deaths in their industry.

Combined Occupational Injury-Reduction Efforts with Health-Promotion Programs

Occupational safety and health professionals have traditionally focused attention on the control of elimination of work hazards to protect all exposed workers. Health-promotion professionals have often found that improved individual health behaviors can be encouraged in the workplace. There is some evidence that occupational injury prevention programs are more effective in combination with programs that promote overall worker health.

CHSWC recommends examining the effectiveness of combining occupational injury-reduction efforts with health-promotion programs.

Improve Efficiency of Administration

CHSWC recommends:

- Improving administrative efficiency and reducing the transaction costs of processing paper checks for the payment of unemployment and disability benefits in the State of California. Approximately \$280 million to \$2.8 billion in administrative savings could be achieved by:
 - Utilizing electronic deposit by mandating that it be offered by payors to payees in lieu of paper check disbursements.
 - Utilizing electronic benefit transfer (EBT) cards for un-banked recipients.
 - Considering electronic payment of medical bills.
- Requiring that the Division of Workers' Compensation (DWC) report on the promptness of first payment by insurance carriers on a regular basis.
- Monitoring and reviewing the implementation of the \$100 workers' compensation lien filing fee.
- Revising the reporting system for filing information on workers' compensation claims. Currently, employers and insurers are required to file the employer's report (DLSR Form 5020, Employer's Report of Occupational Injury or Illness) and the doctor's first report (DLSR Form 5021, Doctor's First Report of Occupational Injury or Illness). Now that the Workers' Compensation Information System (WCIS) is in process and this reporting could be done electronically, the manual filing process could be eliminated for a savings of about \$20 million per year.¹
- Developing a system for the Workers' Compensation Appeals Board (WCAB) to accept electronic medical reports from insurance carriers.

¹ The estimates of savings are based on information from a CWCI ICIS report. The report estimated that the cost of generating a medical benefit notice is \$10. For the purposes of these estimates, we are assuming that generating and mailing an employer report and a doctor's report cost the same as generating and mailing a benefit notice. Estimated savings are \$10.00 per transaction when converting from paper to electronic submission. Therefore, \$10 savings per report x 2 reports (doctor and employer) per filing x 1 million filings per year = \$20 million in savings per year.

SPECIAL REPORT: 2004 WORKERS' COMPENSATION REFORMS

In April 2004, the Legislature passed and Governor Arnold Schwarzenegger signed into law Senate Bill (SB) 899. This bill makes major changes to the workers' compensation program. Most changes to the law became effective April 19, 2004.

Many of the provisions of SB 899 summarized below are supported by research findings generated from Commission on Health and Safety and Workers' Compensation (CHSWC) studies and projects, especially those that make improvements to the permanent disability (PD) schedule, provide return-to-work (RTW) incentives, and contain and reduce medical costs.

FUNDING

User Funding

Labor Code Section 62.5 of SB 899:

- Restores 100 percent user funding of the Workers' Compensation Administration Revolving Fund (WCARF), which funds the operation of the (DWC). (Section 62.5(b))
- Adds RTW Program (described in Section 139.48) to the operations funded by the WCARF. (Section 62.5(a))
- Adds that the user assessments shall not exceed the amount necessary to carry out the purposes of this section. (Section 62.5(e))
- Changes "assessments" to "surcharges."

INTEGRATED BENEFITS IN CARVE-OUTS

Construction industry carve-outs were amended per Labor Code Section 3201.5, and carve-outs in other industries were amended per Labor Code Section 3201.7 to permit the parties to negotiate any aspect of the delivery of medical benefits and the delivery of disability compensation to employees of the employer or group of employers who are eligible for group health benefits and non-occupational disability benefits through their employer.

LIBERAL CONSTRUCTION

Labor Code Section 3202.5 provides that the burden of proof by preponderance of the evidence applies equally to all parties and lien claimants.

SENATE BILL 899

Author

Senator Charles Poochigian

Co-authors

Senator Mike Machado

Senator Dean Florez

Senator Sam Aanestad

Senator Jim Battin

Senator Betty Karnette

Senator Bob Margett

Senator Bruce McPherson

Senator Don Perata

Senator Jack Scott

Senator Jackie Speier

Assembly Member Nicole Parra

Assembly Member Greg Aghazarian

Assembly Member Russ Bogh

Assembly Member Rebecca Cohn

Assembly Member John Dutra

Assembly Member Robert Dutton

Assembly Member Marco Firebaugh

Assembly Member Dario J. Frommer

Assembly Member Tom Harman

Assembly Member Jerome E. Horton

Assembly Member Rick Keene

Assembly Member Mark Leno

Assembly Member Tim Leslie

Assembly Member Carol Liu

Assembly Member Ken Maddox

Assembly Member Barbara Matthews

Assembly Member Kevin McCarthy

Assembly Member Cindy Montanez

Assembly Member Alan Nakanishi

Assembly Member Joe Nation

Assembly Member Fabian Nunez

Assembly Member Sarah Reyes

Assembly Member Simon Salinas

Assembly Member Steve Samuelian

Assembly Member Joseph S. Simitian

Assembly Member Tony Strickland

Assembly Member Lois Wolk

Assembly Member Mark Wyland

Staff

Moira Topp, Deputy Cabinet Secretary for Labor, Workers' Compensation, BT & H, Food and Agriculture, Governor's Office
Don Moulds, Director, Senate Office of Research

Greg Campbell, Deputy Chief of Staff, Assemblymember Wesson's Office
Cynthia Bryant, Chief Deputy Legislative Secretary, Governor's Office

PROVISION OF MEDICAL BENEFITS

Repeal of Treating Physician's Presumption

Labor Code Section 4062.9 repeals completely the presumption of correctness of the treating physician. Section 46 of SB 899 makes the repeal apply to all cases, regardless of the date of injury, but does not constitute good cause to reopen any existing Workers' Compensation Appeals Board (WCAB) decision.

Medical Treatment Defined and Predesignation of Physician

Labor Code Section 4600, amended by SB 899, defines the treatment to "reasonably require to cure or relieve" as the treatment that is in accordance with the utilization schedule or treatment guidelines adopted by the Administrative Director (AD) pursuant to Labor Code Section 5307.27 or the American College of Occupational and Environmental Medicine (ACOEM) guidelines provides as follows:

- The right of an injured employee to choose a treating physician after 30 days from the date the injury is reported is limited to cases where the employer or insurer has not established a medical provider network.
- Predesignation of a personal physician is limited to cases where:
 - (A) The employer provides non-occupational group health coverage in a health care service plan, or
 - (B) The employer provides non-occupational health coverage in a group health plan or a group health insurance policy as described in Labor Code Section 4616.7.
 - (C) The designated physician must, moreover,
 - (1) Be a physician and surgeon,
 - (2) Have previously directed the employee's care and retain his or her medical records, and
 - (3) Agree to be pre-designated.
- If the employer provides non-occupational health care pursuant to a Knox-Keene Health Care Service Plan and the employer is notified of the predesignation, all medical treatment, utilization review of medical treatment, access to medical treatment, and other medical treatment issues shall be governed by the Knox-Keene Health Care Service Plan Act. Disputes regarding the provision of medical treatment shall be resolved pursuant to the Independent Medical Review System of the Department of Managed Health Care.
- If the employer provides non-occupational health care through a group disability policy, as described in Section 4616.7, all medical treatment, utilization review of medical treatment, access to medical treatment, and other medical treatment issues shall be governed by the applicable provisions of the Insurance Code.
- The insurer may require prior authorization of any non-emergency treatment or diagnostic service and may conduct reasonably necessary utilization review pursuant to Section 4610.
- Labor Code Section 4600 provides that only 7 percent of the employees may pre-designate at any time.

SPECIAL REPORT: 2004 WORKERS' COMPENSATION REFORMS

- If any portion of the provision for predesignation is invalid or in violation of any state or federal law, the entire provision will be inoperative. The provision sunsets on April 30, 2007.
- The DWC is required to evaluate the predesignation program and send its findings to the Governor and the Legislature.

Medical Billing

Labor Code Section 4603.2, amended by SB 899, provides that all payments for medical treatment shall be at the fee schedule amount except under written contracts. The time limit to make payment runs from the date of properly itemized billing.

Treatment Guidelines

Labor Code Section 4604.5, amended by SB 899, provides that:

- Medical treatment guidelines can be rebutted only by scientific medical evidence.
- Guidelines are to be evidence-based, nationally recognized and peer-reviewed.
- "The guidelines shall be designed to assist providers by offering an analytical framework for the evaluation and treatment of injured workers, and shall constitute care in accordance with Labor Code Section 4600 for all injured workers diagnosed with industrial conditions."
- Presumption of correctness of treatment guidelines is one affecting the burden of proof.
- Treatment not covered by the guidelines must be recognized by the "national" medical community and be "scientifically based."
- For injuries occurring on or after January 1, 2004, a limit of 24 visits for occupational therapy, along with 24 chiropractic and 24 physical therapy visits, is imposed, unless the employer authorizes additional visits.

Medical Networks

New Labor Code Section 4616 is added by SB 899 and provides that:

- Beginning January 1, 2005, employers or insurers may establish networks to provide medical treatment to injured employees composed of both occupational and non-occupational physicians, with a goal of at least 25 percent primarily engaged in treating non-occupational injuries. (Note that "employers for this purpose means only self-insured employers, joint powers authorities, or the state, according to Section 4616.5)
- Networks shall include a sufficient number of physicians to provide timely treatment.
- Medical treatment for injuries shall be readily available at reasonable times to all employees.
- Employer or insurer has the exclusive right to decide which providers are in the network, but treatment must be provided in accordance with the guidelines.
- Physician compensation shall not be structured to achieve the goal of reducing, delaying or denying treatment.
- Treatment shall be in accordance with the guidelines per ACOEM or Section 5307.27.

- Only a licensed physician in the appropriate scope of practice may modify, delay or deny a request for authorization for treatment. (This governs any internal utilization review process the network may adopt.)
- The AD shall approve a Medical Provider Network (MPN) plan if it meets requirements of this Section. A plan will be deemed approved if the AD does not act on it within 60 days.
- The AD shall adopt implementation regulations in consultation with the Department of Managed Health Care (DMHC).

Economic Profiling of Providers in Medical Network

New Labor Code Section 4616.1 is added by SB 899 and requires that if an insurer or employer that offers a medical provider network evaluates physicians on the economic costs or utilization of services associated with medical care provided or authorized, a description of any policies related to the evaluation ("economic profiling") must be filed with the AD. The description of any policies must also be provided to the physician and be available to the public on request.

Continuity of Care after Provider Leaves Network

New Labor Code Section 4616.2 is added by SB 899 and requires that continuity of care be provided for up to 12 months after provider leaves the network, depending on defined circumstances.

Patient Rights in Networks

New Labor Code Section 4616.3 is added by SB 899 and provides that when an injured employee notifies the employer of the injury or files a claim, the employer arranges an initial medical evaluation and treatment as required by Section 4600. This section:

- Requires that the employer notify the employee of his or her right to choose a physician from the network list after the first visit.
- Authorizes the injured worker to obtain second and third medical opinions in an appropriate specialty within the network if he/she disputes the diagnosis or treatment prescribed by the treating physician.
- Authorizes that treatment by a specialist who is not a member of the network may be permitted on a case-by-case basis if the network does not include a physician who can provide the treatment and the employer or the insurer approves the treatment.

Independent Medical Review to Resolve Dispute with Network

New Labor Code Sections 4616.4 and 4616.6 are added by SB 899 to establish the independent medical review process and provide the following:

- If there is still a dispute after the third network physician's opinion, the injured employee can request independent medical review of the issue.
- Application for the independent medical review is submitted to the AD on a one-page form containing authorization for the release of medical information. The employee may include any relevant material or documentation with the application.
- The AD, or an independent medical review organization with which the AD has contracted, assigns an independent medical reviewer (IMR).

SPECIAL REPORT: 2004 WORKERS' COMPENSATION REFORMS

- The standard to be used by the IMR is that contained in the medical treatment utilization schedule adopted by the AD under Section 5307.27 or the ACOEM guidelines.
- Following receipt of the application, the employer or insurer furnishes the IMR with all information that was considered in relation to the disputed treatment or diagnostic service, including all correspondence with physicians who provided treatment or diagnoses and complete and legible copies of all medical records and other information used by the physicians in making their determinations. The IMR then conducts "a physical examination of the injured employee at the employee's discretion." The IMR report is due in 30 days or less if the reviewer says it is urgent.
- If the disputed health care service has not been provided and the IMR certifies in writing that an imminent and serious threat to the health of the injured employee may exist, the report must be expedited and rendered within three days after the examination by the IMR. The AD may extend the deadlines for analyses and determinations involving both regular and expedited reviews for up to three days in extraordinary circumstances or for good cause.
- The IMR sends his or her report to the AD "in layperson's terms to the maximum extent practicable."
- The AD must immediately adopt the IMR's determination and promptly issue a written decision. If the IMR determination finds that the disputed treatment or diagnostic service is consistent with the guidelines, "the injured employee may seek the disputed treatment or diagnostic service from a physician of his or her choice from within or outside the medical provider network." Treatment outside the network must be consistent with the guidelines.
- No additional exams or reports shall be ordered or admitted by the Workers' Compensation Appeals Board (WCAB) on issues of medical treatment under networks.

Organizations Deemed Approved by Networks

New Labor Code Section 4616.7 is established by SB 899 and provides that the following organizations are deemed to meet all or specified parts of the eligibility requirements to be networks:

- Health Care Organization licensed under Labor Code Section 4600.5.
- Health Care Service Plan licensed pursuant to the Knox-Keene Act.
- Group disability policy for medical expenses under Insurance Code Section 106(b).
- Taft-Hartley Act health and welfare fund.

Early Medical Treatment

Labor Code Section 5402 amended by SB 899:

- Requires the employer to provide medical treatment up to \$10,000 until the claim is accepted or denied.
- Provides that treatment does not give rise to a presumption of liability.

Admissible Evidence

Labor Code Section 5703 is amended by SB 899 and provides that the list of admissible evidence to the appeals board will also include the medical treatment utilization schedule in effect pursuant to Section 5307.27 or the guidelines in effect pursuant to Section 4604.5.

Agreed Medical Evaluator/Qualified Medical Evaluator

Qualified Medical Evaluator System and Report Writing

Labor Code Section 139.2 is amended by SB 899 to provide for assignment of three-member panels of qualified medical evaluators (QMEs) when requested by an employee or employer pursuant to amended Sections 4062.1 and 4062.2, rather than solely in cases of unrepresented workers.

Labor Code Section 139.2 also provides that:

- The AD is to notify the employee of the assignment of a panel is applicable to panels requested under Section 4062.1 (unrepresented worker) or Section 4062.2 (represented worker). (Section 139.2(h)(2))
- All physicians are to evaluate permanent disability (PD) consistent with the ratable criteria set forth in Section 4660, which refers to the AMA Guides, rather than based on standardized examination and testing techniques generally accepted by the medical community. (Section 139.2(j)(2))
- The medical treatment criteria refer to Section 5307.27.

Agreed Medical Evaluator/Qualified Medical Evaluator and Medical Dispute Resolution

Labor Code Sections 4060-4062.5 are extensively revised and recast by SB 899 to eliminate "dueling" qualified medical evaluators (QMEs) and substituting one QME selected by the parties from a panel provided by the AD [or DWC medical director]. These Labor Code Sections provide that:

- The dispute resolution process through an agreed medical evaluator (AME) or a single QME applies to all disputes including compensability of claim (Section 4060), permanent disability (PD) evaluation (Section 4061), and all other disputes (Section 4062).
- There is an exception for medical treatment issues that are subject to utilization review under Section 4610, but if the employee objects to the outcome of utilization review, the employee may still request an exam through the AME or single QME process (Section 4062(a)).
- Existing law is retained regarding second opinion upon employer's objection to spinal surgery. (Section 4062(b)).
- Unrepresented employee gets a QME exam by requesting a panel to be assigned, then selecting one from the panel. (Section 4062.1)
- Represented employee gets an AME if parties agree, but if they do not agree on AME, then either side requests a panel, each side strikes one name, and the remaining physician is the QME who will conduct the exam. (Section 4062.2) The new procedure for represented cases applies to dates of injury on or after January 1, 2005. (Section 4062.2(a))
- Existing provisions of law regarding communication with the AME or QME and the duty of the QME to render a report are recast in Sections 4062.3 and 4062.5.

Educational Materials for Treating Physicians

Labor Code Section 4062.8 is added by SB 899 to require the AD to develop and revise educational materials for treating physicians with information and training in basic concepts of workers' compensation and reporting. [This requirement was previously in Section 4062.9, along with the treating physician's presumption, which is repealed.]

VOCATIONAL REHABILITATION

Supplemental Job Displacement Benefit

Duplicate Labor Code Section 139.5 is repealed.

SB 899 reenacts former Labor Code Section 139.5 Vocational Rehabilitation benefit for injuries occurring before January 1, 2004, but the vocational rehabilitation law is repealed entirely effective January 1, 2009.

PAYMENT OF BENEFITS

Timing of Payments

Labor Code Section 4650 is amended by SB 899 to require first PD payment 14 days after the last payment of temporary disability (TD) indemnity regardless of whether or not the extent of PD can be determined.

Temporary Disability Limit to Two Years

Labor Code Section 4656 is amended by SB 899 to:

- Limit aggregate TD payments for a single injury after the effective date of the statute to 104 compensable weeks within a period of two years after the first payment of TD.
- TD may extend to 240 weeks aggregate within the first five years after date of injury for the following injuries: (Section 4656(c)(2)):
 - Acute and chronic hepatitis B.
 - Acute and chronic hepatitis C.
 - Amputations.
 - Severe burns.
 - Human immunodeficiency virus (HIV).
 - High-velocity eye injuries.
 - Chemical burns to the eyes.
 - Pulmonary fibrosis.
 - Chronic lung disease.

PERMANENT DISABILITY

Permanent Disability Indemnity Chart, Including Tiered Permanent Disability Benefit

Labor Code Section 4658 is amended by SB 899 to increase the number of weekly payments for higher-rated PDs and reduce those for lower ratings after the new PD schedule goes into effect as follows:

Number of Weeks of Indemnity Payable (for each percent of disability within the range)	Range of Percentages Permanent Disability
3	0.25-9.75%
4	10.00-14.75%
5	15.00-24.75%
6	25.00-29.75%
7	30.00-49.75%
8	50.00-69.75%
16	70.00-99.75%

Return-to-Work Adjustment

The above PD payments will be reduced or increased as follows, if the employer employs 50 or more employees:

- If an employer does not offer the injured employee regular, modified, or alternative work lasting a year within 60 days of the permanent and stationary (P&S) date, each remaining PD payment to be paid will be increased by 15 percent.
- If the employer offers regular, modified, or alternative work lasting at least a year, each remaining PD payment will be decreased by 15 percent regardless of whether the injured employee accepts or rejects the offer.
- If regular, modified, or alternative work is provided but later terminated by the employer before the end of the period for which PD payments are due, "the amount of each of the remaining disability payments shall be paid in accordance with paragraph (1)[scheduled PD payments] and increased by 15 percent. An employee who voluntarily terminates employment shall not be eligible for payment under this subparagraph."

Effective Date

Labor Code Section 4658 amendments by SB 899 apply to injuries occurring on or after the date of the revised schedule (Section 4658 (d)(1)), which is due by January 1, 2005, per Labor Code Section 4660.

For compensable claims arising before April 30, 2004, the amendments do not apply to the determination of PD if there has been either a comprehensive medical-legal report or a report by a treating physician, indicating the existence of PD, or the employer is required to provide the notice required by Section 4061 to the injured worker.

Definition of Modified and Alternate Work

Labor Code Section 4658.1 is added by SB 899 to define regular, modified, and alternative work as currently understood. Definitions of modified and alternate work require at least 85 percent of time-of-injury earnings and location at a reasonable commute distance from residence.

PD Rating Schedule

Labor Code Section 4660 is amended by SB 899 to require a revised schedule for injuries after 2004 and to revise extensively the basis for the schedule. The provisions of Labor Code Section 4660 specify that:

- One of the basic principles of PD rating, "diminished ability to compete," is now replaced by "diminished future earning capacity." Other basic principles remain the nature of the physical injury or disfigurement, age, and occupation.
- The "nature of the physical injury or disfigurement" shall incorporate the AMA Guides for both descriptions and percentage impairments.
- The rating schedule to be developed by the AD shall adjust from impairment to arrive at diminished earning capacity by a formula based on empirical data of average long-term loss of earnings from each type of injury for similarly situated employees, including age and occupation, based on the RAND study of PD developed under contract with CHSWC.
- The new schedule is to be adopted by January 1, 2005 (Section 4660(e)) and is also applicable to injuries before January 1, 2005, if there has been no comprehensive report, no treater's P&S report, and no obligation for employer to issue Labor Code Section 4061 notice [i.e., TD has not ended].

RETURN-TO-WORK INCENTIVES

Return-to-Work Reimbursements for Worksite Modifications

Labor Code Section 139.48 provides that:

- The RTW Program shall be implemented to the extent funds are available. (Its funding source is from Section 5814.6 penalties and from transfers by the AD from the WCARF per Section 62.5.)
- The program will reimburse up to \$1,250 of expenses to accommodate a temporarily disabled worker or \$2,500 to accommodate a permanently disabled worker.
- Only private employers with 50 or fewer full-time employees are eligible for reimbursements from the program.

APPORTIONMENT

Labor Code Section 4663 [Apportionment of Aggravation Injuries] is repealed by SB 899 and reenacted to provide for apportionment of PD based on causation. Labor Code Section 4663 provides that:

- A physician evaluating PD must make an apportionment determination by finding what approximate percentage of the PD was caused by the direct result of the current injury and what approximate percentage of the PD was caused by other prior and subsequent factors (including injuries).

SPECIAL REPORT: 2004 WORKERS' COMPENSATION REFORMS

- If the evaluator is unable to make an apportionment determination, he or she must state the specific reasons and consult with other physicians or refer the employee to another physician "from whom the employee is authorized to seek treatment or evaluation in accordance with this division in order to make the final determination."
- Employees claiming an industrial injury must disclose all previous permanent disabilities or physical impairments if requested.

Labor Code Section 4664 is added by SB 899 and provides that:

- Employer is liable for the percentage of PD directly caused by the injury.
- Any prior awarded disability is conclusively presumed to continue.
- Accumulation of all PD awards is not to exceed 100 percent for any one region of the body.

LC Sections 4750 and 4750.5 Repealed

Labor Code Sections 4750 and 4750.5 are repealed. All apportionment provisions are now in Labor Code Sections 4663 and 4664.

LIEN FILING FEE

Labor Code Section 4903.05 is amended by SB 899 to provide that persons filing liens on behalf of medical providers must also pay the \$100 filing fee.

PENALTIES

Private Attorneys General Exception

Labor Code Section 2699 added by SB 899 provides that the right of employees to prosecute for civil penalties for Labor Code violations that could be prosecuted by the state does not extend to civil penalties under workers' compensation under Division 4, audit penalties under Section 129.5, or discrimination under Section 132a.

Penalty for Unreasonable Delay

Labor Code Section 5814 is repealed and reenacted by SB 899 effective June 1, 2004, to extensively revise penalties for unreasonable delay without regard to whether the injury occurs before the operative date. Labor Code Section 5814 provides:

- For a penalty of up to 25 percent of amount delayed, to maximum of \$10,000 that may be imposed, discretionary. (Section 5814(a))
- That the employer can avoid the 25 percent penalty by paying 10 percent penalty of the delayed payment within 90 days of discovery if delay is discovered by the employer before the employee makes a claim for penalty. (Section 5814(b))
- That potential penalties are deemed resolved by Compromise and Release or Stipulations and Awards or by trial of the underlying benefit unless expressly reserved. (Section 5814(c))
- That any Section 4650(d) no-fault penalty is credited against the 25 percent penalty. (Section 4815(d))

SPECIAL REPORT: 2004 WORKERS' COMPENSATION REFORMS

- That nothing in this Section shall be construed to create a civil cause of action.
- That no unreasonable delay in the provision of medical treatment shall be found when the treatment has been authorized by the employer in a timely manner and the only dispute concerns payment of a billing submitted by a physician or medical provider as provided in Section 4603.2.
- For a two-year statute of limitations from the date the payment of compensation was due.
- That new provisions apply to all injuries, without regard to whether the injury occurs before, on, or after June 1, 2004, the operative date of the amended Section.

Penalty for General Business Practice of Delays

New Labor Code Section 5814.6 is added by SB 899 to provide:

- Administrative penalties not exceeding \$400,000 for any employer or insurer that knowingly violates Section 5814 with a frequency that indicates a general business practice. The AD may impose a penalty under either this Section or Section 129.5(e) [audit penalty].
- Penalties from Labor Code Section 5814.6 are to be deposited into the RTW fund pursuant to Section 130.48
- The new section is effective June 1, 2004.

INJURY AND ILLNESS PREVENTION

Injury and Illness Prevention Program

Labor Code Section 6401.7 is amended by SB 899 and provides that:

- The requirement for insurers to review their insureds' Injury and Illness Prevention Program (IIPP) only applies to those insured employers with an experience modification of 2.0 or greater on their insurance rates.
- The review is to be conducted within six months of the commencement of the initial insurance policy term.
- The reviewer need not be "independent."

FRAUD

Fraud Reporting

Labor Code Section 3823 is amended by SB 899 to give immunity to persons reporting medical billing and provider fraud if in good faith and without malice.

REFORM IMPACT

Study of Effects of Reform

New Labor Code Section 138.65 is added by SB 899 and requires the AD to contract for a study of the effect of the 2003 and 2004 legislation on workers' compensation insurance rates. The study is to be completed by January 1, 2006.

Division of Workers' Compensation Regulatory Action Pursuant to Workers' Compensation Reform Legislation

Assembly Bill 749

The following Labor Code sections were modified by the passage of AB 749:

Labor Code	Original Mandate/Tasks	Current Status per DWC
127.6	<p><u>Medical Study</u></p> <p>Administrative Director (AD), in consultation with the Commission on Health & Safety & Workers' Compensation (CHSWC) and other state agencies, to conduct a study of medical treatment provided to injured workers. Study to begin by July 1, 2003, report and recommendations by July 1, 2004.</p>	<p>This study is important for long-term system savings. The study encompasses the directive from Assembly Bill (AB) 749 and the utilization study from Senate Bill (SB) 228. The state contract freeze exemption approval has been granted by Finance.</p> <p>The contract has been awarded to the RAND Corporation to conduct the study. Final report on treatment guidelines were submitted to the Division of Workers' Compensation (DWC) in November 2004.</p>
129.5	<p><u>Audit Unit Procedures/Penalties</u></p> <p>AD to revise audit program to establish new system of profile audit review (PAR) of each adjusting location of California workers' compensation claims at least once every five years. Audit subjects who pass the PAR pay unpaid compensation found, but are not assessed penalties. Audit subjects that do not pass are subject to a full compliance audit (FCA). New penalty factor is established based on size of adjusting location, with penalties as high as \$40,000 for the most serious violations.</p>	<p>Regulations adopted effective January 1, 2003.</p>
138.4	<p><u>Benefit Notices to Employees from Claims Administrators</u></p> <p>The regulations need to be revised to reflect changes in this statute.</p>	<p>Review of notices and drafting of changes have commenced. Formal rulemaking will be initiated in 2005.</p>

SPECIAL REPORT: 2004 WORKERS' COMPENSATION REFORMS

Labor Code	Original Mandate/Tasks	Current Status per DWC
139.47	<u>Return to Work</u> Department of Industrial Relations (DIR) Director to establish a program to encourage early and sustained return to work, including creation of educational materials.	Initial meetings with public were held in April 2002 and July 15, 2002. Reimbursement program for injuries after July 1, 2004, is subject to funding from Labor Code Section 5814.6 penalties or funds transferred from the Workers' Compensation Administration Revolving Fund (WCARF) by the AD in accordance with rules to be adopted. (SB 899)
139.48	<u>Return-to-Work Reimbursement Program / Study</u>	
139.49		
3201.5	<u>Carve-out</u> AD to collect data regarding collectively bargained carve-out programs. By June 30, 2004, and annually thereafter, AD to report claim statistics to Legislature; by July 1, 2004, and annually, AD to report number of collective bargaining agreements (CBAs) and number of employees covered to DIR Director.	Consolidated with "carve-out" rulemaking for SB 228 changes. Adopted as emergency regulation effective April 22, 2004. Permanent regulation adopted effective October 4, 2004.
3201.7		
3201.9		
3550	<u>Posting Notices</u> AD to prescribe the form and content of compensation notices required to be posted by employers "in a conspicuous location frequented by employees"; notice must be available in Spanish.	Notice of Proposed Rulemaking in May 2003, hearing July 2003. Notice of modified proposal and 15-day comment period to incorporate SB 899 changes completed May 20, 2004. Completed rulemaking file submitted to Office of Administrative Law (OAL) on May 21, 2004, approved by OAL and submitted to Secretary of State. Regulations effective August 1, 2004.
3551	Time-of-Hire Pamphlet	
3822	<u>Fraud Notice (annual to every employer, claims adjuster, third-party administrator, physician, and attorney participating in Workers' Compensation)</u>	Fraud notices were mailed to all claims administrators in June of 2004. Mailings to the other specified groups will take place by early 2005.
4062.9	<u>Develop and Revise Educational Materials for Primary Treating Physicians and Chiropractors</u>	Have initiated discussions with University of California San Francisco (UCSF) to obtain assistance.

SPECIAL REPORT: 2004 WORKERS' COMPENSATION REFORMS

Labor Code	Original Mandate/Tasks	Current Status per DWC
4600.2	<u>Pharmacy Contract Standards</u>	Contracted with UCSF Pharmacy School to provide study and recommendations for contract standards. Report received at the end of March. Regulations are being drafted, and rulemaking will commence in 2005.
4603.4	<u>Standardized Medical Billing Forms and Electronic Billing</u>	Pre-Rulemaking Public Meetings held in June, July, August and October 2004 to be followed by Notice of Rulemaking in early 2005.
5401	<u>Claim Form and Notice of Potential Eligibility for Benefits</u>	Same as Posting Notice

Assembly Bill 227 and Senate Bill 228 – Fee Schedules

The following Labor Code sections pertaining to fee schedules were modified by the passage of AB 227 and SB 228:

Labor Code	Original Mandate/Tasks	Current Status per DWC
5307.1	<p><u>Physician Fee Schedule</u></p> <p>Provides that the existing Official Medical Fee Schedule (OMFS) for physician services will remain in effect in 2004 and 2005, but fees will be reduced by 5 percent.</p> <p>As of January 1, 2006, the AD will have the authority to adopt an OMFS for physician services.</p>	<ul style="list-style-type: none"> • Emergency regulation adopted effective January 2, 2004, to carry out the physician schedule that is to remain in place for calendar years 2004/2005. • Complete rulemaking file submitted to OAL on April 30, 2004. • Effective date of new regulations is July 1, 2004 • Working on clean-up regulations to be adopted on emergency basis in October 2004.

SPECIAL REPORT: 2004 WORKERS' COMPENSATION REFORMS

Labor Code	Original Mandate/Tasks	Current Status per DWC
5307.1	<p><u>Inpatient Facility Fee Schedule</u></p> <p>AD to adopt an inpatient facility fee schedule for inpatient hospital care based on the Medicare fee plus 20 percent.</p>	<ul style="list-style-type: none"> • Emergency regulation adopted effective January 2, 2004. • Complete rulemaking file submitted to OAL on April 30, 2004. • Effective date of new regulations is July 1, 2004. • Order issued October 13, 2004, to update the Inpatient Hospital Fee Schedule effective for discharges on or after November 29, 2004, to conform to Medicare rate changes.
5307.1	<p><u>Outpatient Facility Fee Schedule</u></p> <p>AD to adopt a new fee schedule for hospital outpatient departments and ambulatory surgery centers based on the Medicare fee for hospital outpatient departments plus 20 percent.</p>	<ul style="list-style-type: none"> • Emergency regulation adopted effective January 2, 2004. • Complete rulemaking file submitted to OAL on April 30, 2004. • Effective date of new regulations is July 1, 2004.
5307.1	<p><u>Pharmacy Fee Schedule</u></p> <p>AD to adopt a new fee schedule for pharmaceuticals based on the Medi-Cal fee schedule.</p>	<ul style="list-style-type: none"> • Medi-Cal rates have been posted on the department's website to carry out provisions that rates are 100 percent of fees prescribed in Medi-Cal effective January 1, 2004. Website recently updated to reflect Medi-Cal changes to dispensing fees and approximately 7.8 percent reduction effective September 1, 2004, and to correct some errors. • The Division of Workers' Compensation (DWC) is in the process of identifying the appropriate experts to provide necessary expertise to develop a fee schedule for pharmaceuticals not covered by Medi-Cal.

SPECIAL REPORT: 2004 WORKERS' COMPENSATION REFORMS

Labor Code	Original Mandate/Tasks	Current Status per DWC
5307.1	<p><u>Official Medical Fee Schedule Shall Be Adjusted To Conform To Relevant Medicare/Medi-Cal Changes within 60 Days Of Changes</u> (except specified inpatient changes)</p>	<p>Statutes specify that changes can be implemented without regulations. DWC is exploring hiring and contracting options to obtain necessary expertise to monitor all Medicare changes for all schedules and post the applicable provisions to the DIR website.</p> <p>Order issued October 13, 2004, to update the Inpatient Hospital Fee Schedule effective for discharges on or after November 29, 2004, to conform to Medicare rate changes.</p>
5307.1	<p><u>Specified Schedules Not In Fee Schedule Until January 1, 2005</u></p> <p>(Skilled nursing facility, home health agency, inpatient for hospitals exempt from Medicare Prospective Payment System, outpatient renal dialysis)</p>	<p>RAND is contracted to provide technical assistance on the fee schedules and will outline some of the policy issues relating to adapting these new schedule for workers' compensation. Expect to move forward on these in early 2005.</p>
5307.1	<p><u>Miscellaneous Medicare Fee Schedules</u></p>	<p>Adopted emergency regulations effective January 2, 2004, incorporating Medicare's Ambulance, Laboratory and Pathology, and Durable Medical Equipment Prosthetics Orthotics Supplies fee schedules. Rulemaking on permanent regulation completed and rulemaking file was submitted to OAL on April 30, 2004. The regulation was approved by OAL and filed with the Secretary of State. The effective date of the new regulations is July 1, 2004.</p>

SPECIAL REPORT: 2004 WORKERS' COMPENSATION REFORMS

Other Mandates of AB 227 and SB 228

Other Mandates of AB227 and SB228:

Labor Code	Original Mandate/Tasks	Current Status per DWC
4903.5	<u>Medical Provider Lien Filing Fee</u>	Emergency regulations adopted effective January 1, 2004. Final rulemaking file submitted to OAL on April 29, 2004. The rulemaking was disapproved by OAL on June 15, 2004, because regulations were adopted by the AD rather than the Court Administrator. An Acting Court Administrator was appointed, reviewed the rulemaking record, ratified the rulemaking and adopted the rules. The rulemaking record was re-submitted to OAL and approved. The final regulations are effective June 30, 2004.
4658.5 of AB 227	<u>Supplemental Job Displacement Benefit</u>	Notice of Rulemaking sent to OAL on May 10, 2004. Public hearing was held July 8, 2004. Comments are being reviewed, and appropriate changes will be sent for a further 15-day public comment period.
3201.7	<u>Carve-out Program For All Industries</u>	Emergency regulations were adopted effective April 22, 2004. Notice of rulemaking sent to OAL on May 10, 2004. Public hearing was held July 8, 2004. Permanent regulation adopted effective October 4, 2004.
4062(b)	<u>Spinal Surgery Second Opinion Procedure</u>	Spinal Surgery Second Opinion emergency regulations were filed with the OAL on June 23, 2004, and became effective July 2, 2004. Notice of rulemaking for adoption of permanent regulations was issued in July 2004. Public hearing held September 21, 2004. Notice of modification of proposal sent to public for 15-day comment period, which ends on October 28, 2004. Completed rulemaking record will be submitted to OAL on October 29, 2004.

SPECIAL REPORT: 2004 WORKERS' COMPENSATION REFORMS

Labor Code	Original Mandate/Tasks	Current Status per DWC
139.5 of AB 227	<u>Vocational Rehabilitation Repeal for Injuries On/After January 1, 2004</u>	Exception to Executive Order 2 for rulemaking to revise claim form and posting notices and time-of-hire pamphlet to delete vocational rehabilitation and insert supplemental job displacement benefit (SJDB) was granted by Finance in March 2004. The regulations for claim form and posting notice and time-of-hire pamphlet initiated pursuant to AB 749 needed a 15-day comment period to incorporate changes pursuant to AB 227 / SB 228. Complete rulemaking file submitted to OAL on May 21, 2004. Regulations were approved by OAL and became effective on August 1, 2004.
4610	<u>Utilization Review</u>	Regulations have been drafted and were posted on the DWC Forum website for three pre-rulemaking public comment periods. Comments are being reviewed and appropriate changes are being made to the draft. DWC intends to adopt emergency regulations.
4603.4	<u>Electronic Bill Payment Regulations</u> Regulations required to be adopted by January 1, 2005, and to mandate acceptance of electronic bills by January 1, 2006.	Pre-Rulemaking Public Meetings held in June, July, August and October 2004, followed by Notice of Rulemaking in early 2005.
5318	<u>Spinal Surgery Implantables/Hardware Reimbursement</u> Statute codified old regulation providing extra payment for hardware/implantables until AD adopts reimbursement regulation.	Seeking assistance from RAND to develop possible approaches to refine reimbursement methodology.
5307.27	<u>Medical Treatment Utilization Schedule</u>	DWC staff will review the recommendations of the CHSWC/DWC study by RAND after public comments are presented and reviewed in December 2004.

SPECIAL REPORT: 2004 WORKERS' COMPENSATION REFORMS

Labor Code	Original Mandate/Tasks	Current Status per DWC
	<u>Changes Without Regulatory Effect</u>	Preparation of various Rule 100 changes without regulatory effect to conform regulations to statutory changes is underway for filing with OAL by the end of 2004 or early 2005. These will cover changes resulting from elimination of the Industrial Medical Council, changes to the time frame for payment of medical bills, and the percentage of interest for late paid bills.

Senate Bill 899

The following Labor Code sections were modified by the passage of SB 899:

Labor Code	Statutory Mandate	Effective Date	Regulation Deadline	Current Status
Section 139.48	<u>Return-to-work Reimbursement Program for Workplace Modifications</u> (Statute specifies that it shall be implemented to the extent funds are available. The program is to be funded from Section 5814.6 business practice penalty and from funds transferred from WCARF in accordance with regulations of the AD.)	For injuries on or after July 1, 2004. Sunsets January 1, 2009.	No date specified.	Will initiate in 2005.
Section 4062.1	<u>Qualified Medical Evaluator Procedures</u> for Unrepresented Workers	April 19, 2004.	No date specified.	Draft regulations are being developed. Rulemaking process to begin shortly.

SPECIAL REPORT: 2004 WORKERS' COMPENSATION REFORMS

Labor Code	Statutory Mandate	Effective Date	Regulation Deadline	Current Status
Section 4062.2	<u>Qualified Medical Evaluator Procedures</u> for Represented Injured Workers	For injuries on or after January 1, 2005.	No date specified.	Draft regulations are being developed. Rulemaking process to begin shortly.
§4600	<u>Predesignation of Physician</u>	April 19, 2004. Sunsets April 30, 2007.	No date specified.	Will initiate action later this year or early next year.
Section 4603.2	<u>Physician Billing / Itemization of Services and Payment</u>	April 19, 2004.	No date specified.	Will initiate action later this year or early next year.
Section 4616	<u>Medical Provider Networks</u>	January 1, 2005.	November 1, 2004.	Two advisory committee meetings have been held. Regulations have been drafted and have been posted on the DWC website for two pre-rulemaking public comment periods. Filed regulatory package with OAL on October 22, 2004, for emergency adoption of regulations to be effective November 1, 2004.
Section 4616.4	<u>Independent Medical Review</u>	January 1, 2005.	No date specified.	Draft regulations are being developed. Submitted regulatory package to OAL in December 2004, for emergency adoption of regulations to be effective January 1, 2005.

SPECIAL REPORT: 2004 WORKERS' COMPENSATION REFORMS

Labor Code	Statutory Mandate	Effective Date	Regulation Deadline	Current Status
Section 4658 and Section 4658.1	<u>Offer of Regular, Modified, or Alternate Work in Relation to 15 Percent Increase or Decrease of Permanent Disability (PD) Indemnity</u>	For injuries on or after effective date of revised PD Rating Schedule and effective for all dates of injury if no report issued indicating PD, and if no 4061 notice required	No date specified.	Will develop regulations and initiate rulemaking action in 2005.
Section 4660	<u>Permanent Disability Rating Schedule Revision</u>	For all dates of injury if no report issued indicating PD and if no 4061 notice required.	January 1, 2005.	DWC has contracted with RAND for expedited study to meet the January 1, 2005, effective date. Study is underway and staff members are working on the project. Advisory group meetings with the public were held in July and September 2004. Emergency regulations will be effective January 1, 2005.
Section 5402	<u>Requirement for Employer to Provide Up to \$10,000 in Medical Treatment Until Claim is Accepted or Rejected</u>	April 19, 2004.	No date specified.	Will initiate action in 2005.

SPECIAL REPORT: 2004 WORKERS' COMPENSATION REFORMS

Labor Code	Statutory Mandate	Effective Date	Regulation Deadline	Current Status
Section 5814.6	<u>Penalty for Business Practice of Unreasonable Delay in Payment of Compensation</u>	Operative June 1, 2004.	No date specified.	Draft regulations were posted to the DWC Forum website for pre-rulemaking public comment period. Advisory group will be established to address comments and provide input to DWC. Will initiate rulemaking action in 2005.

DIVISION OF WORKERS' COMPENSATION
2004 Rulemaking Calendar - Other Than Reform Regulations

Labor Code	Subject Matter of Regulation	Current Status
Section 138.6	<u>Workers' Compensation Information System</u> , adoption of updated implementation guides and medical data collection implementation guide.	Met with advisory committee/task force on Workers' Compensation Information System (WCIS) in May and June 2004, and thereafter holding bi-weekly conference call meetings of the task force. Rulemaking will be initiated in early 2005.
Sections 124, 127.5, 5307, Civil Code Sections 54, 54.1, 54.8 Govt. Code Section 11135, Americans With Disabilities Act [42 USC 12131-12134, 28 CFR 35.130.]	<u>Workers' Compensation Program Access for Persons With Disabilities</u> , provide procedures for requesting accommodation and for appealing denial of accommodation.	Draft of regulation was posted on the DWC Forum website in 2003. Further process deferred to 2005 due to press of reform priorities.

SPECIAL REPORT: 2004 WORKERS' COMPENSATION REFORMS

Labor Code	Subject Matter of Regulation	Current Status
Section 4600.2	<u>Ethical Standards of Workers' Compensation Referees</u>	Will initiate action in 2005.
Sections 139, 139.2	<u>Qualified Medical Evaluator Discipline, Conflict of Interest</u>	Will initiate action later this year or early 2005.
Section 4659	<u>Commutation Tables</u> for Life Pension / Permanent Disability	Will initiate action in 2005.
Sections 126, 127, 138.7; Govt. Code Section 6250 et seq. (Public Records Act)	<u>Public Records Access</u> (Including EDEX, Case Opening Documents, Workers' Compensation Appeals Board (WCAB) District Office file access); Confidentiality of Records Containing Individually Identifiable Information Maintained by DWC.	Will initiate action in 2005.

SPECIAL REPORT: PERMANENT DISABILITY HISTORY

Introduction

The most extensive and potentially far-reaching effort undertaken by the Commission on Health and Safety and Workers' Compensation (CHSWC) is the study of workers' compensation permanent disability (PD) in California

Injured workers in California who have suffered some level of PD begin to receive permanent partial disability (PPD) benefits when (a) they have returned to work after an injury or (b) their condition is judged unlikely to improve further, even with additional medical treatment. PPD payments are meant to compensate workers for their disability.

Senate Bill (SB) 899, signed into law by Governor Schwarzenegger in April 2004, extensively revised the basis for the PD schedule.

The results of the CHSWC study by RAND, "An Evaluation of California's Permanent Disability Rating System," provided policy makers with valuable information about the strengths and weaknesses of the California rating system and offered empirical evidence to be considered in the debate about permanent disability.

Key Findings from the CHSWC Study by RAND

- The current rating schedule accomplishes its goal of targeting higher benefits to more severely rated impairments.
- Earnings losses for similarly rated impairments for different body parts vary dramatically.
- There is inconsistency in ratings across different doctors. Specifically, ratings based on applicant physician medical reports are higher than ratings based on defense physician medical reports. Physicians are often unable to agree on the type, number or severity of impairments.
- Injured workers who return to work (RTW) even just four quarters after injury have significantly lower earnings losses.

Results from the CHSWC Study by RAND

The CHSWC Study by RAND offered a number of potential ways to improve the PPD rating system, which have been incorporated in SB 899:

- Consider the reordering of benefits in proportion to wage losses to reduce the disparities in compensation for different types of injuries.
- Consider moving to a more objective system, such as the American Medical Association (AMA) Guides, for descriptions of impairment ratings to reduce and/or eliminate the level of inconsistency in ratings by different physicians.²

² A reliance on more objective criteria could exclude those workers from compensation who may experience substantial wage loss from impairments for which there is no clear objective criteria.

SPECIAL REPORT: PERMANENT DISABILITY HISTORY

- Consider incorporating incentives for RTW through a program that makes benefits contingent on RTW.
- CHSWC Study by RAND suggested that some states have implemented a two-tier system that provides higher benefits to workers who do not receive an offer of post-injury employment when they are medically able to return to work.

Revised Permanent Disability Schedule: Provisions of Senate Bill 899

Some of the potential ways to improve the PPD system suggested by the CHSWC Study by RAND have been incorporated in SB 899. The new legislation relating to the revised PD schedule contains the following provisions:

- **Revised Permanent Disability Rating Schedule**

Labor Code Section 4660 amended by SB 899 requires a revised PD rating schedule for injuries after 2004 and extensive revision to the basis for the schedule. The provisions of Labor Code Section 4660 specify that:

- In determining the percentages of PD, account shall be taken of the nature of the physical injury or disfigurement, the occupation of the injured employee, and his or her age at the time of the injury, consideration being given to an employee's diminished future earning capacity. The employee's diminished earning capacity is to be determined by a formula based on empirical data of average long-term loss of earnings from each type of injury for similarly situated employees, including age and occupation.
- The administrative director (AD) shall formulate the adjusted rating schedule based on empirical data and findings from the Evaluation of California's Permanent Disability Rating Schedule, Interim Report (December 2003), prepared by the RAND Institute for Civil Justice, and on data from additional empirical studies.
- The "nature of the physical injury or disfigurement" shall incorporate the American Medical Association (AMA) Guides for both descriptions and percentage impairments.
- The new schedule is to be adopted by January 1, 2005 (Section 4660(e)); it is also applicable to injuries before January 1, 2005, if there have been no comprehensive report, no treater's permanent and stationary (P&S) report, and no obligation for the employer to issue Labor Code Section 4061 notice [i.e., temporary disability (TD) has not ended].

- **Return-to-work Incentives: Tiered Permanent Disability Benefit System**

Labor Code Section 4658 is amended by SB 899 to provide for a RTW adjustment. The RTW adjustment consists of:

- Tiered PD benefit system, which provides for 15 percent decrease or increase in the weekly rate of the payments of the PD award depending on whether or not the employer offers RTW.
- If the employee is terminated before PD is all paid, the remaining weeks of the PD benefit from the time of termination are increased 15 percent above the base rate. The 15 percent adjustment does not apply to employers with less than 50 employees.

History of the CHSWC Studies on Permanent Disability

Background

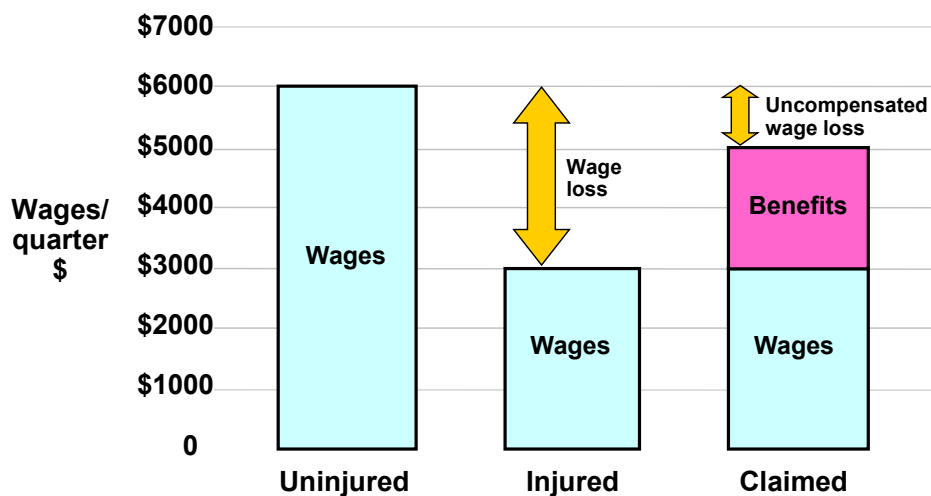
The manner in which California rates and compensates injured workers for total PD and PPD has enormous impact on the elimination of unnecessary litigation, adequacy of injured workers' benefits, their ability to return to gainful employment, and the cost of the workers' compensation system to employers.

The CHSWC Study by RAND consists of two phases. In the first phase of the evaluation, the focus is on measuring the long-term earnings losses and other outcomes for workers with PD claims. The second phase is intended to refine these measures and at the same time provide policy makers with suggestions for reforms intended to improve outcomes for injured workers at reasonable cost to employers.

Methodology for Evaluating the Permanent Disability System

CHSWC studies by RAND analyzed wage losses sustained by permanently disabled workers and the replacement rates or the extent to which workers' compensation benefits compensated for the wage loss. The studies have shown that some workers experience significant wage losses after a workplace injury.

Wages, Losses and Replacement Rates



Wage Loss = \$3000 Proportional Wage Loss = 1/2 Replacement Rate = 2/3

Source: CHSWC Study of Permanent Disability by RAND

Another CHSWC study by RAND also evaluated PPD benefits based on several criteria including:³

- Adequacy:

This measure examines whether the resources being devoted to workers' compensation income benefits are sufficient. The goal is to obtain a replacement rate, PPD benefits/wage loss of at least 66 2/3 percent at which benefits would be considered adequate.

- Equity:

- Horizontal equity -- requires that workers with equal wage losses should receive equal benefits.
- Vertical equity -- workers with different earnings losses should receive benefits proportional to their losses. There should be a close relationship between benefits and earnings losses.
- Consistency -- requires that workers with similar disabilities and similar outcomes be repeatedly assigned the same benefits.

CHSWC Study of Permanent Disability – Phase 1

The initial report from the CHSWC Study of PD, "Compensating Permanent Workplace Injuries: A Study of the California System," examines earnings losses and the replacement of earnings losses for workers with PPD claims at insured firms in California in 1991-92. The main findings of this report include:

- Enhancement of the Wage Loss Study to Include Self-insureds.
- Public Self-insureds Expected in 2004.
- Impact of Local Economic Conditions on Wage Loss.

The findings from these reports are summarized in the "Projects and Studies" Section of this Annual Report.

CHSWC Studies by RAND Supported Increases in Permanent Disability Benefits Addressed by Assembly Bill 749

The CHSWC studies by RAND examined pre-2002 reform benefits at insured and self-insured firms in California. The studies showed that injured workers were not compensated well for their losses.

In particular, the CHSWC studies by RAND discussed above showed that:

- Workers with low ratings suffered greater uncompensated wage losses.
- At both insured and self-insured firms, replacement rates were very low for workers with the lowest indemnity claims. At the self-insured and insured firms, claimants with total indemnity falling below the 20th percentile had 14 percent and 11 percent, respectively, of their lost earnings replaced by benefits.

This disparity was addressed by Assembly Bill (AB) 749.

³ An Evaluation of California's Permanent Disability Rating System. RAND. July 2004.

CHSWC Study of Permanent Disability – Phase 2

The second phase of the project is intended to result in policy suggestions to improve PD compensation in California. Key questions are:

- Since the PD rating system is so critical to the distribution of benefits and since many regard it as inconsistent and unreliable, how can the rating system be revised to improve both confidence in the system and outcomes for injured workers?
- Are the problems we have identified with PD in California in common in other states, and if not, what do other states do to improve outcomes?

CHSWC Studies by RAND Address Important Questions

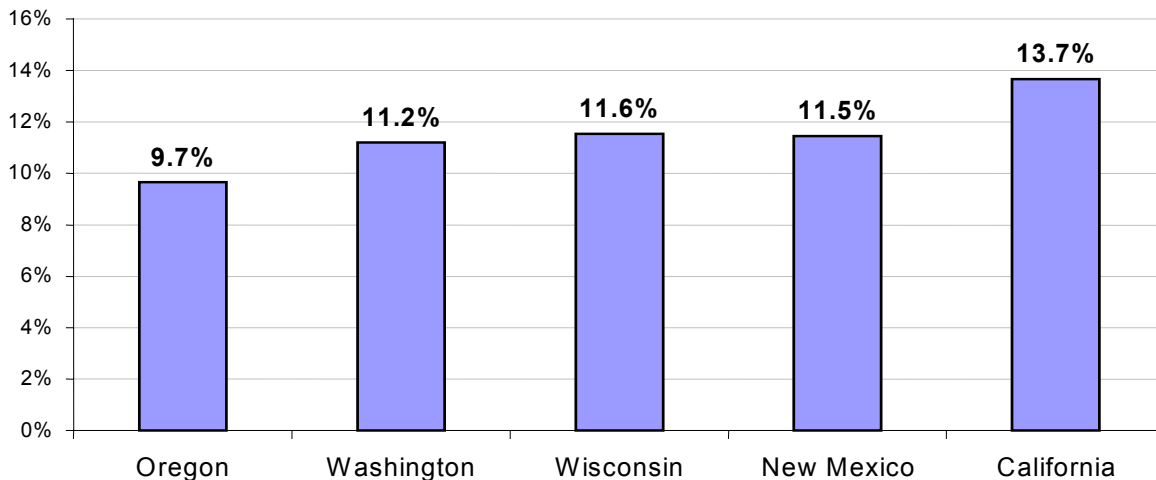
- Analysis of Wage Loss and RTW in Other States

The study entitled “Earnings Losses and Compensation for Permanent Disability in California and Four Other States” is part of an ongoing evaluation of the workers' compensation PPD system in California that CHSWC began in 1996. The study examines the losses experienced by workers with PD and RTW rates in New Mexico, Washington, Wisconsin, Oregon and California and compares the adequacy of compensation received from the states' workers' compensation systems.

A 2002 CHSWC study by RAND study entitled “Earnings Losses and Compensation for Permanent Disability in California and Four Other States,” which compared findings for California, New Mexico, Washington, Wisconsin and Oregon, has shown that:

- PPD benefits were highest in California.
- The higher costs paid by California employers in the current workers' compensation system do not necessarily result in better outcomes for California's injured workers.
- Benefits paid as a proportion of lost earnings are comparatively low in California, driven by very low RTW rates.

Percentage of PPD Claimants Out of Work After 3 Years



Source: RAND

SPECIAL REPORT: PERMANENT DISABILITY HISTORY

- **Permanent Disability Rating Tool Study**

Disability ratings are determined by a disability schedule that assesses the effect of scheduled injuries among workers in different occupations and adjusts for age. The higher the rating, the larger the number of weeks of benefits the worker receives. PPD payments are based on the disability rating, as well as on pre-injury wages.

The rating schedule includes virtually every form of disability, and ratings based on the schedule are deemed prima facie evidence of disability in any compensation proceeding. In practice, however, and for a variety of reasons, schedule-based computations of disability level can be the source of many disputes.

Since the PD rating system is so critical to the distribution of benefits and since many regard it as inconsistent and unreliable, CHSWC contracted with RAND to conduct a study to examine how the rating system can be improved.

The main objective of the study is to provide an empirical basis for assessing the function of the rating schedule. The study evaluates the accuracy and equity of the ratings assigned to different impairments for different workers.

The study found that the current California PD schedule does meet the criteria of vertical equity but not horizontal equity. The other key findings of the study are summarized above.

Next Steps

The CHSWC study by RAND suggests that consideration be given to examining the following issues:

- Implementation and update of the new PD schedule:
 - The revised PD rating schedule provided for by SB 899 requires injury descriptions to be based on the American Medical Association (AMA) Guides. The disability descriptions in the California Permanent Disability Rating System and the AMA Guides are different.

Currently, there is no system to link the injuries in the California Disability Evaluation Unit (DEU) data used by RAND to the AMA Guides injury descriptions. The next step in implementing the revised PD schedule should be the development of a crosswalk between the two systems.
 - SB 899 calls for periodic revision of the schedule to reflect changes in average earnings losses. The CHSWC study by RAND recommends the adjustment of the PD schedule using data on earnings losses for workers evaluated initially under the AMA Guides. Consideration should be given to a data collection plan and reporting requirements to be in place on January 1, 2005, to meet the updating requirement of SB 899.
- The impact on disputes of the revised PD schedule and other SB 899 reforms relating to PD, such as apportionment and the two-tiered benefits structure, needs evaluation.
- The impact of PD changes on the workers' compensation system.

SPECIAL REPORT: CAUSATION AND APPORTIONMENT

Introduction

In November 2003, Assemblyman Rick Keene and Senator Charles Poochigian formally requested that the Commission on Health and Safety and Workers' Compensation (CHSWC) prepare a background study that would provide research on laws of compensability and apportionment in California as compared with other states. The study would address the impact of compensability being defined as a "major contributing factor" as it is done in some states.

In response to the request, CHSWC's legal consultant prepared a background analysis on compensability and apportionment. Also, CHSWC staff developed a description of the various states' laws relating to these two areas and provided alternative recommendations for consideration.

California Law on Causation and Apportionment⁴

Causation

California workers' compensation costs are higher than other states despite lower temporary disability (TD) and permanent disability (PD) compensation weekly payment rates. One of the reasons may be, and probably is, that many injuries are compensable in California that would not be compensable in other jurisdictions. This is true notwithstanding the fact that the statutory language may be essentially the same, although some jurisdictions use the term "accident" rather than "injury." California Labor Code Section 3600 uses the word "injury," and compensation is obtainable for disability resulting from a single incident, a disease, an emotional disorder, or a series of minor traumatic insults (cumulative trauma).

The basic California statutory requirement is that to be compensable, an injury must arise out of and in the course of the employment as stated in Labor Code Section 3600(a). Other statutory conditions of compensability included in Labor Code Section 3600 are that: (1) neither employer nor employee is excluded by statute; (2) the employee is performing service incidental to the employment at the time of injury; (3) the injury is proximately caused by the employment; (4) the injury is not caused by the employee's intoxication; (5) the injury is not intentionally self-inflicted; (6) the employee did not willfully and deliberately cause his or her own death; (7) the injury did not arise out of an altercation in which the injured employee was the initial physical aggressor; (8) the injury is not caused by the injured employee's commission of a felony; (9) the injury did not arise out of voluntary participation in an off-duty recreational, social, or athletic activity; and (10) the claim was not post termination.

Although language of the conditions of compensability seems clear, the conditions have been subjected to extensive liberalization by judicial interpretation. With minor periods of fluctuation, the judicial trend toward liberalization has been persistent, although the Legislature has on occasion stemmed the extension of the outer limits of compensability. In 1978, what is now Labor Code Section 3600(a)(9) was enacted to limit compensability of injuries sustained during off-duty recreational, social, or athletic activities. In 1982, Labor Code Section 3202.5 was adopted to preclude use of liberal interpretation in fact-finding. In 1986, Labor Code Section 3600(a)(8) was added to preclude recovery for injuries incurred during commission of a felony.

⁴ Memo prepared for CHSWC by C. L. Swezey, Consultant to CHSWC, "California Law on Causation and Apportionment," November 20, 2003.

Later, in 1993, Labor Code Section 3208.3 was amended to require that the employment be the preponderate cause of psychiatric injuries and to exclude several kinds of psychiatric claims; Labor Code Section 3600(a)(10) was added to limit post-termination claims. Most recently, in 1994, Labor Code Section 3600.8 was added to provide that employees voluntarily participating in government-sponsored alternative-commute programs are not acting in the course of their employment while traveling to or from work unless they are paid their regular wage or salary for the travel periods.

Apportionment

As noted in the discussion of causation, California employers take employees as they find them at the time of employment, and when an injury lights up or aggravates a previously existing condition rendering it disabling, liability for the full disability without proration is imposed. *Colonial Ins. Co. v IAC (Pedroza)* (1946) 29 C2d 79, 83, 172 P2d 884, 887, 11 CCC 226, 228. Thus, if the injury contributes to the need for medical treatment or TD compensation, there can be no apportionment of the award. *Granado v WCAB* (1968) 69 C2d 399, 33 CCC 647. An employer whose employment contributed to TD or the need for medical treatment is liable for the full amount even though other employment contributed if the other employers involved are not reachable. *Buhlert Trucking Co. v WCAB (Gilpin)* (1988) 199 CA3d 1530, 53 CCC 53.

PD, on the other hand, is apportionable but not to causation. No apportionment of PD may be made merely because of the existence of a disease or pathological condition that was asymptomatic and did not cause "labor disablement" before the industrial injury. *Ferguson v IAC* (1958) 50 C2d 469, 326 P2d 145, 23 CCC 108. The employer is liable for all PD proximately caused by the injury but is not liable for any PD that would have been present if the injury had not occurred. *Franklin v WCAB* (1978) 79 CA3d 224, 235, 145 CR 22, 29, 43 CCC 310, 315.

PD may consist of one or more of the following: (1) disability directly caused by the injury; (2) disability caused by the acceleration, aggravation, or "lighting up" of some pre-existing condition; (3) disability that existed before the injury; (4) disability resulting from the normal progress of some pre-existing condition apart from the effects of the injury. The first two are the liability of the employer, but the third (Labor Code Section 4750) and fourth (Labor Code Section 4663) are not. *California Workers' Compensation Practice* Section 5.15 (4th ed., Cal CEB 2003). Labor Code Section 5500.5(a), however, precludes apportionment to a prior uncompensated cumulative injury in a cumulative injury case. These legal principles are well settled, but the judicially established rules regarding the kind and quality of evidence required to justify apportionment are strict.

The employer has the burden of proving the proportion of disability attributable to non-industrial factors. Apportionment under Labor Code Section 4750 requires proof of actual labor disablement before the injury. This cannot be established by a "retroactive prophylactic work restriction" postulated after the subsequent industrial injury, i.e., it is speculative for a doctor to say that he would have imposed work restrictions on a prophylactic basis if he had seen the worker before the injury. *Ditler v WCAB* (1982) 131 CA3d 803, 814, 182 CR 839, 846, 47 CCC 492, 499. A medical opinion that recommends apportionment merely on the basis of a previous pathological condition or disease that did not cause labor disablement is based on incorrect legal theory and extends beyond the area of the physician's expertise. *Berry v WCAB* (1968) 68 C2d 786, 69 CR 68, 33 CCC 352. Labor Code Section 4750 does not permit apportionment in all cases of successive injuries; it is applicable only to successive permanent disabilities. *Wilkinson v WCAB* (1977) 19 C3d 491, 498, 138 CR 696, 42 CCC 406.

Labor Code Section 4663 requires proof that a demonstrable part of the disability would exist as the result of the normal progression of a non-industrial condition if the industrial injury had not occurred. *Pullman Kellogg v WCAB (Normand)* (1980) 26 C3d 450, 454, 161 CR 783, 785, 45 CCC 170, 173. It is the disability resulting from the non-industrial disease, rather than the cause of the disease, that is the proper subject of apportionment. Evidence that the disease would have caused disability at some indefinite future date is not sufficient. *Franklin v WCAB* (1978) 79 CA3d 224, 243, 145 CR 22, 33, 43 CCC 310, 322. Medical testimony that 80 percent of a worker's heart disability "would have been anticipated" absent industrial factors has been held insufficient to justify apportionment under Labor Code Section 4663. *Creel v Southern Cal. Rapid Transit Dist* (1986) 14 CWCR 44.

Different Models of States' Laws Relating to Compensability and Apportionment ⁵

According to a survey of various states, conducted as part of the Oregon Major Contributing Cause Study, in the majority of states, a disability is considered compensable even if it results from a combination of a work-related incident and a pre-existing condition or weakness. The study points out that historically, accidental injuries have been compensable under workers' compensation if they arise out of and in the course of employment.

Some states have adopted different standards in recent years that have made the standard of compensability more stringent:

- Four jurisdictions have adopted a very high standard for compensability called a major contributing cause standard.
- Others have adopted less stringent standards.
- Seven states have adopted a substantial contributing cause.
- Three states utilize a significant contribution standard that can usually be met by testimony of a credible physician that the contribution of the work to the disability was "significant."
- New Jersey uses the material contributing factor standard.

CHSWC Study Recommendations

CHSWC believes that the laws on apportionment could reasonably be revised by:

- Limiting the rule barring "retroactive" prophylactic restrictions.
- Precluding a single employee from receiving PD awards exceeding 100 percent over his or her lifetime for the same part of the body.
- Creating a presumption that a PD, once determined, will continue to exist at the time of any subsequent industrial injury.
- Nullifying the rule of *Ashley v WCAB* (1995) 37 CA4th 320, 23 CWCR 216, 60 CCC 683, that one may not apportion to subsequent non-industrial conditions.

Senate Bill 899 Provisions Relating to Causation and Apportionment

Senate Bill (SB) 899 repealed Labor Code Sections 4750 and 4750.5 and added 4663 and 4664. The new Labor Code Sections relating to apportionment provide that:

- Apportionment "shall be based on causation."

⁵ Welch, Ed, Final Report: Oregon Major Contributing Cause Study (October 5, 2000).

SPECIAL REPORT: CAUSATION AND APPORTIONMENT

- Reports addressing PD must address causation and must determine percentage of PD caused by injury and by other factors or refer to another doctor to evaluate apportionment.
- The injured employee must disclose previous disabilities or impairments upon request.
- The employer is liable for the percentage of PD directly caused by the injury.
- Any prior awarded disability is conclusively presumed to continue.
- Accumulation of all PD awards is not to exceed 100 percent for any one region of the body.

Next Steps

CHSWC recommends monitoring the impact of these provisions on litigation and injured workers.

SPECIAL REPORT: ASSESSMENT of 24-HOUR CARE OPTIONS FOR CALIFORNIA

Background

Employers in California experience higher costs for workers' compensation medical care than employers in most other states, and California ranks among the highest in workers' compensation premium rates. Suggestions have been made to more closely coordinate or combine worker' compensation medical care with the general medical care provided to patients by group health insurers in order to reduce overall administrative costs and derive other efficiencies in care.

This system of integrating occupational and non-occupational medical and disability systems has been called 24-hour care. In this system, all medical delivery, occupational and non-occupational, would be through the worker's group health provider for the life of the claim or the length of employment.

Similarly, to avoid disputes and litigation over causation for the majority of cases, wage replacement for disability would be under the same arrangement regardless of whether the condition arose out of occupational or non-occupational cause. The duration of the benefit and the level of benefits could be set the same.

In October 2003, Senator Richard Alarcón requested that the Commission on Health and Safety and Workers' Compensation (CHSWC) conduct a study on 24-hour care to look for the potential for cost savings by integrating workers' compensation and group health.

CHSWC contracted with RAND to conduct this study. The main objectives of the study are to examine the feasibility of implementing a 24-hour care system in California and to determine the cost benefit of such a program.

Twenty-four-hour care integrates services or benefits into one package for workers' compensation and group health. For purposes of this study, RAND focused on integrating benefits by analyzing the integration of health care benefits between the group health provider network and workers' compensation providers.

Preliminary Findings

- What are the issues with the workers' compensation system that lead to considering 24-hour care?

The study found:

- High and growing costs of the California workers' compensation system.
 - Medical care as an important cost driver.
 - Concerns about the appropriateness of care.
 - High litigation rates that reflect dissatisfaction by workers and inefficiencies in processing claims.
- What is the evidence that 24-hour care can address the above workers' compensation issues and what are the components needed to do so?

SPECIAL REPORT:
ASSESSMENT OF 24-HOUR CARE OPTIONS FOR CALIFORNIA

The study found that potential benefits of 24-hour care include:

- Removing inconsistencies in standards of care:
 - Achieving consistent legal language for medical necessity.
 - Ensuring consistency of the evidence-based standards for what is good healthcare.
- Achieving medical care cost savings through:
 - Reduction in overuse.
 - Standardization of provider fees.
- Quality improvement by more appropriate use.
- Better access to care for work-related injuries.
- Administrative cost savings, which are only achieved if health insurance is integrated.
- Worker satisfaction leading to reduction in disputes.

The study found techniques to achieve cost savings and better quality:

- Care management methods to reduce overuse.
- Consistent fees for providers:
 - Capitation – managed care plan.
 - Fee schedule – fee-for-service plan.
- Reviews for high-cost procedures.
- Cost sharing by workers, which is absolutely not allowed under workers' compensation and would require change in workers' compensation laws.
- Internal medical review to protect workers from inappropriate denials of care.

- What are the unique attributes of 24-hour care that are not in the current system?

Many of the intervention techniques noted above could be used outside of the 24-hour care model. Some intervention techniques already used in California include practice guidelines, caps on chiropractic and physical therapy services, fee schedules and generic drugs [all part of Senate Bill (SB) 228] and provider networks (SB 899). The current workers' compensation system in California is moving in this direction. Techniques not being used include formal care management methods except Health Care Organizations (HCOs) and cost sharing by workers, which is not allowed under current law.

- What does this mean for 24-hour care?

If a formal integrated structure system is created that pulls together health care from group health and workers' compensation sides and puts intervention techniques into place, that structure may help keep the system intact and operating effectively.

RAND believes that this is the extra advantage that 24-hour care creates in terms of increasing the feasibility of having these techniques have an impact on the care and on the cost for the system.

SPECIAL REPORT:
ASSESSMENT OF 24-HOUR CARE OPTIONS FOR CALIFORNIA

- How feasible would it be to implement 24-hour care in the current employer-based insurance environment?

The Employee Retirement Income Security Act of 1975 (ERISA) is the biggest challenge. ERISA is Federal legislation that regulates employee benefit plans. ERISA preempts a state government from regulating employer-based plans (EBP), while still preserving its authority over insurers operating in the state. ERISA also prohibits a state from mandating that employers offer health insurance. ERISA preemptions have impeded several previous 24-hour care pilots. Workers' compensation and disability plans are exempt from ERISA.

CHSWC and RAND conducted focus groups as part of the study with employers, labor, medical providers, attorneys and state employees to obtain their comments and feedback on the project.

Issues Raised by Stakeholders

The stakeholder focus groups raised the following issues:

- Provider roles and responsibilities.
- Value and detractor for employees.
- Changes for employers.
- Reconciling two types of insurance coverage.
- Administrative effects for state regulators.
- Extent of integrating these functions.

General Recommendations

General recommendations for the current system and 24-hour care as a whole are to:

- Establish a consistent standard of care for all medical services, based on scientific evidence:
 - Legal language regarding medical necessity.
 - Standards to guide practice.
- Establish state guidance that supports voluntary development of 24-hour care pilots by employers and insurers.
- Reinforce reforms being undertaken to resolve problems with the appeals process.
- Establish separate medical and fiscal decision-making for the provider networks specified by SB 899.
- Consider adding an internal medical review step to address grievances before they go to the Workers' Compensation Appeals Board (WCAB).

SPECIAL REPORT:
ASSESSMENT OF 24-HOUR CARE OPTIONS FOR CALIFORNIA

Specific Recommendations

Specific recommendations for implementing 24-hour care:

- Identify design options and timeline:
 - Ideally, test both basic design options:
 - Integration of medical services.
 - Integration of both services and insurance.
 - Allow all pilots to operate for at least five years before judging feasibility and scalability.
 - Identify action plan components.
- Create a supportive State environment to help pilots do what they need to do:
 - Create expert resources in occupational health and workers' compensation to support physicians.
 - Authorize the option of employee cost sharing for medical care for work-related injuries.
 - Establish a mechanism for internal medical review of denials of medical services.
 - Establish a mechanism for external appeals of medical care disputes (tort issues).
- Require evaluation:
 - Site selection and context:
 - Test options broadly with a diversity of sites.
 - Include sites with high probability of success.
 - Assess impacts of the individual components of 24-hour care programs.
 - Assess potential for scale-up and transportability.
 - Process of implementation:
 - Consider that this may be the most important part of the evaluation.
 - Identify drivers and barriers for success.
 - Program effects:
 - Select control groups carefully.

Key features needed for 24-hour care pilots to work at this time in California:

- Ensure that key stakeholders must be willing to participate.
- Establish authority for care-management techniques needed to change care and costs.
- Allow cost sharing for work-related care and track its effects carefully.
- Provide technical support to the pilots for areas where they identify that help is needed.

Next Steps

CHSWC should promote and evaluate the pilot projects.

SPECIAL REPORT: CALIFORNIA INSURANCE GUARANTEE ASSOCIATION

Purpose

The goal of this project is to reduce the long-term cost of California Insurance Guarantee Association (CIGA) assessments and to spread those costs equitably among large and small employers. This proposal would end the practice of shifting disproportionate CIGA costs onto smaller employers, and it would enable CIGA to meet its obligations with less reliance on costly bond financing. The central recommendation is to assess all employers according to the amount of their premiums before any credit or reduction for a large deductible. In addition, CIGA would not be responsible for penalties for late medical bills of the insolvent insurer.

Background

CIGA was established in 1969 to administer and pay the “covered claims” of insolvent property and casualty insurance carriers. All property and casualty insurance companies admitted to conduct business in California are required to be a member of CIGA. CIGA’s obligations are divided into three separate categories of claims: (a) workers’ compensation; (b) homeowners’ and automobile; and (c) other claims. Unless otherwise noted, this background paper is exclusively limited to CIGA’s obligations for workers’ compensation claims. This paper will provide a brief description of CIGA’s operations, highlight certain issues that adversely impact its operations, and recommend certain changes to the Insurance Code and Labor Code to assist CIGA with its mission.

When a court of competent jurisdiction declares a workers’ compensation insurer insolvent, CIGA is obligated to pay the unearned workers’ compensation premium to the insurer’s policyholders. It also must pay 100 percent of the workers’ compensation benefits due to the insurer’s claimants and adjust those claims.

CIGA obtains the funds to pay its covered claims through assessments (technically, “premium”) charged to member companies, as well as releases special statutory deposits previously placed with the state by the insolvent carriers, distributions from the insolvent carriers’ estates (to include reinsurance collections), and investment income. Assessed member insurers are permitted to recoup their CIGA payments by adding a surcharge to their workers’ compensation policies.

CIGA’s assessments are based on the amount of net written premiums paid by employers. To the extent that the net written premium is reduced by large deductibles, CIGA collections from assessments are also reduced. Self-insureds also pay a deposit assessment to the security fund, which is determined based on their required deposit amount and their credit worthiness. The employers who have large-deductible policies do not pay assessments for the self-insurance security fund nor do they pay assessments on deductible policies. These employers who have large-deductible policies therefore shift the burden of CIGA assessments onto smaller employers when they avoid paying CIGA assessments on deductible policies.

According to CIGA, 25 workers' compensation insurance companies have been liquidated since September 2000. CIGA is the second largest workers' compensation claims payer in the state being surpassed only by the State Compensation Insurance Fund (SCIF). Currently, CIGA's total claims liabilities exceed \$900 million per year paid to approximately 40,000 injured workers. During the 12 months ending March 31, 2004, CIGA's total monthly cash drain averaged \$91.9 million each month, of which \$81.9 million represented workers' compensation payments.⁶

The draft Hays Insurance Industry Study reported that the continued solvency and payment ability of CIGA is a major hurdle preventing additional capacity from coming to California.⁷ This conclusion is supported by the fact that CIGA reported total assets from all three categories of claims of \$876 million but including total ultimate liabilities of \$4.5 billion as of March 2004.

CIGA receives revenues of about \$1.1 billion annually from its workers' compensation line of insurance, including the 2 percent premium assessment⁸ mechanism that provided \$380 million for the 12-month period ending March 31, 2004. CIGA's current expenses for workers' compensation are about \$2.7 billion. As a result, as of March 31, 2004, CIGA has a significant workers' compensation funding shortfall of about \$1.6 billion in ultimate liability.⁹

CIGA Assessments and Deductibles

As described above, CIGA receives a significant amount of its funding through imposing a 2 percent assessment. This assessment is made against the "net direct written premium" of the workers' compensation carriers. There is a precedent for assessing against the entire gross written premium before the application of the large deductible discounts, namely, the Worker's Compensation Insurance Rating Bureau (WCIRB) for its operating expenses, and the Division of Workers' Compensation (DWC) for its Workers' Compensation Administrative Revolving Fund (WCARF). In addition, several states are also assessing against the "net direct written premium to cover the CIGA fund."

In addition, the self-insureds pay 2 percent of the benefits paid on claims incurred during the previous year to make up the deficit for defaulted self-insured employers' liabilities pursuant to Labor Code Section 3745(b). Also, most of the self-insured employers participate in the alternative security deposit provided by the Security Fund and are paying a deposit assessment to the Fund, which is determined based on their required deposit amount and their credit worthiness. Some members of the workers' compensation community have expressed concern that since the use of large deductibles by medium and large employers has steadily grown in California since they were introduced in 1995, small employers are indirectly paying a disproportionate amount of the CIGA assessment.

The following chart shows California workers' compensation written premium and written premium net of deductibles.

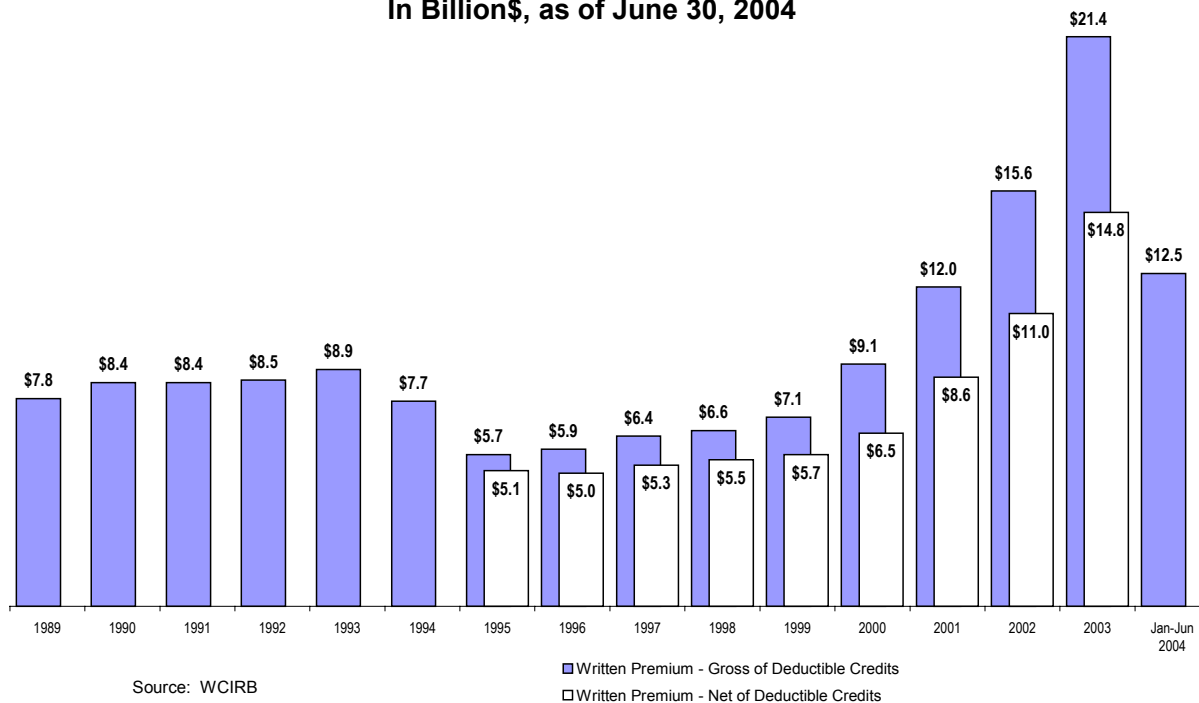
⁶ CIGA Executive Summary. May 27, 2004.

⁷ Draft report entitled "Study of the California Workers' Compensation Insurance Market" by the Hays Companies for the Commission on Health and Safety and Workers' Compensation (CHSWC), published September 2003.

⁸ This 2 percent assessment will sunset on December 31, 2007, per Insurance Code Section 1063.5. The assessment will then be 1 percent.

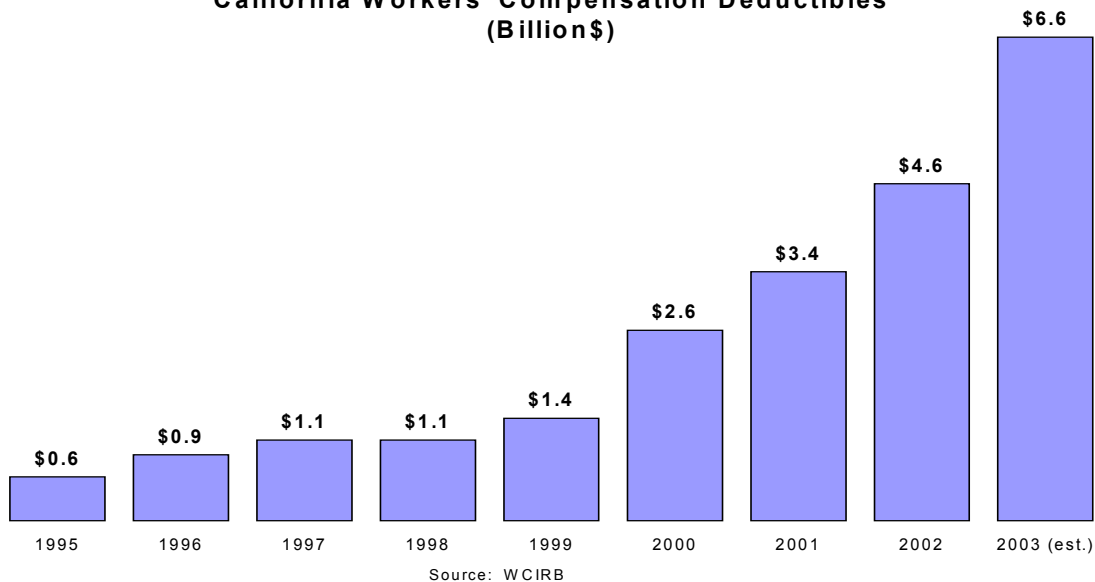
⁹ CIGA Financial Statements for March 31, 2004, and June 30, 2003.

**California Workers' Compensation Written Premium
In Billion\$, as of June 30, 2004**

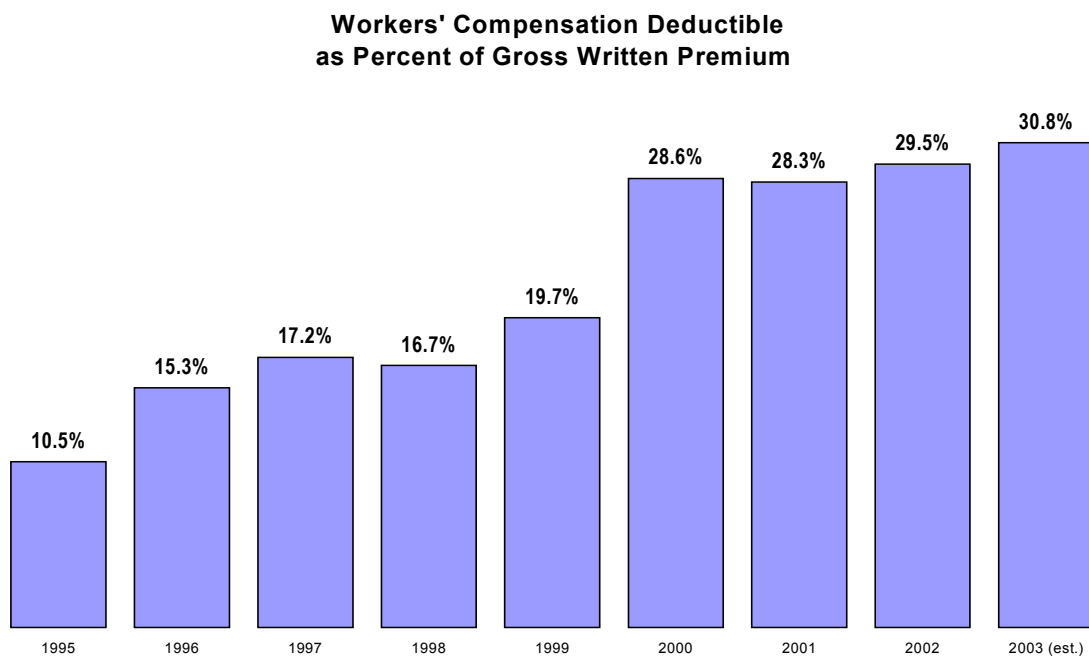


The following chart shows the changes in the total workers' compensation deductibles from 1995 to 2003.

**California Workers' Compensation Deductibles
(Billion\$)**

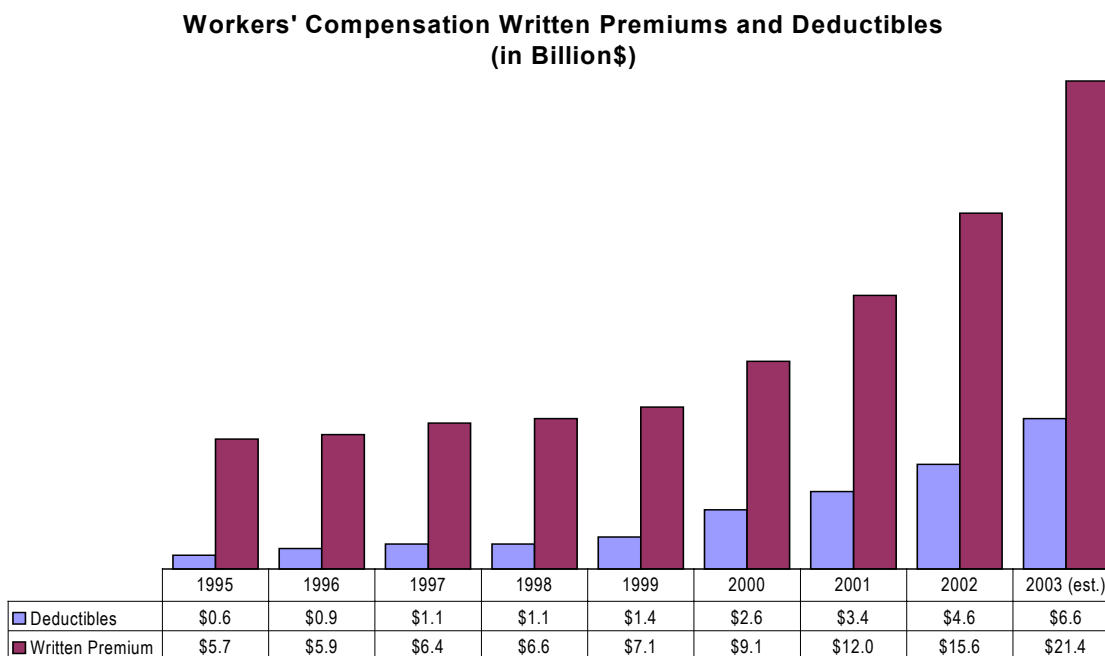


The chart below shows workers' compensation deductibles as a percent of the written premium.



Source: WCIRB

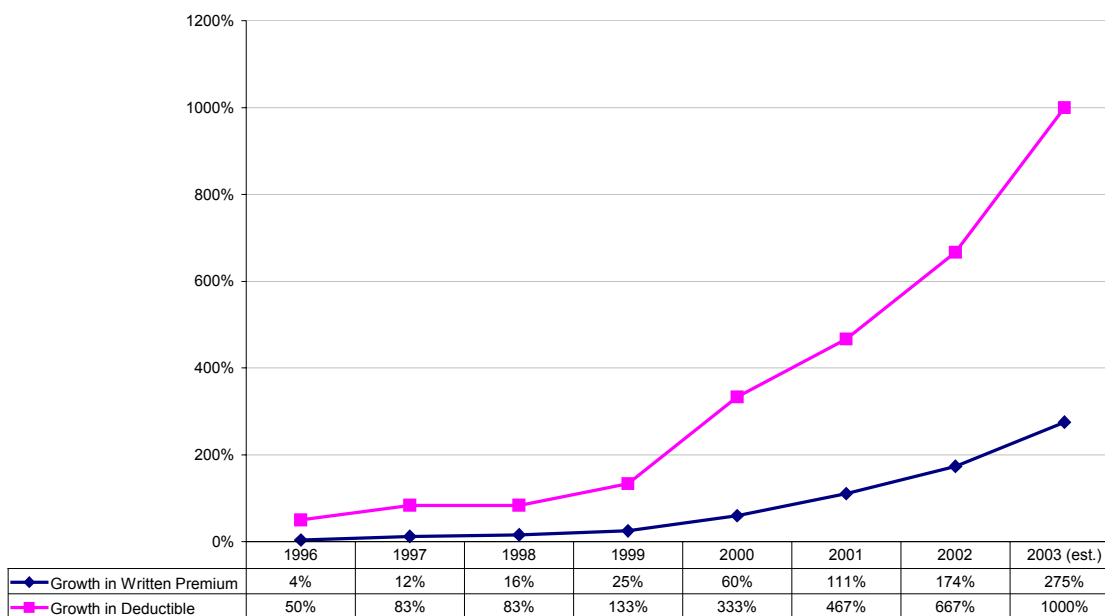
The following chart compares the total workers' compensation written premium to the total deductibles from 1995 to 2003.



Source: WCIRB

The chart below shows the percentage growth of written premium and deductibles since 1995. Note that while written premium grew 274 percent, deductibles grew by 111 percent during the same time period, 1995 to 2003.

**Percentage Growth of Written Premium and Deductibles
Since 1995**



Source: WCIRB

Estimated Savings

Thirty percent of the insured market exposure is written as large deductibles. Since the employer takes responsibility for these liabilities, the deductible portion has not been subject to the assessment to support CIGA. This legislative proposal would spread the assessment for CIGA across the entire gross premium, regardless of the portion of premium that is written as deductibles. This is a cost-neutral proposal that only has the effect of redistributing the burden of the CIGA assessment across a wider portion of insured employers.

CIGA was authorized in last year's workers' compensation legislation to issue bonds up to \$1.5 billion. CIGA received a Triple A rating from both Fitch Ratings and Moody's Investor Services (this highest rating possible) for its upcoming sale of \$750 million in revenue bonds. This bond sale is crucial to CIGA's ability to continue to pay the claims of insolvent insurance carriers. The impact would be to reduce the bond, the time frame for payoff and the interest. In addition, there would be a substantial shift in the burden of the assessment from smaller employers to larger employers.

Information From Other States¹⁰

In the majority of the states, an Insurance Guaranty Fund meets the obligations of insolvent workers' compensation insurers by administering and disbursing covered claims. In a few states, such as Arizona and Florida, a different fund covers the claims of insolvent insurers. In Arizona, the workers' compensation claims of insolvent insurers are paid by Arizona competitive state fund. In Florida and New Jersey, workers' compensation claims are covered by a separate workers' compensation security fund. In several states, such as Washington, Ohio, and West Virginia, workers' compensation insurance is written exclusively through the monopolistic state fund.

According to the National Conference of Insurance Guaranty Funds (NCIGF), the majority of the jurisdictions' state guaranty funds obtain their funding from assessments on insurers' net written premiums. However, several states have recently changed their assessment base to gross written premium.

Insurers recoup these assessments by one of the following ways:

- 28 jurisdictions recoup assessments through building in the paid assessments amounts into their rates and premiums.¹¹
- 4 jurisdictions, including California,¹² pass on assessments in the form of policyholder surcharges.¹³
- 15 jurisdictions recoup the assessments in the form of premium tax offsets. Premium tax offsets are recouped at a rate of 10 percent to 25 percent per year.
- 4 jurisdictions recoup their assessments through either premium tax offsets or through rates and premiums.

CHSWC Recommendations

- Change the assessment base.

CIGA is funded by assessments based on the amount of net premium after deductibles. To the extent that the gross premium is reduced by large deductibles, the CIGA assessment is also reduced.

CHSWC recommends that the Legislature consider reviewing the potential for CIGA to assess the deductible portion of a workers' compensation insurance policy.

¹⁰ Information in this section was derived from <http://www.ncigf.org> and from conversations with Terrie Cass, Corporate Treasurer at National Conference on Guaranty Funds.

¹¹ Although Pennsylvania passes on assessments through rates and premiums, it was not specified how the Pennsylvania Workers' Compensation Security Fund passes on its assessments.

¹² California Insurance Code Section 1063.14 requires that the amount of any surcharge shall be separately stated on either a billing or policy declaration sent to an insured. Each member insurer is required to recoup, over a reasonable length of time, a sum reasonably calculated to recoup the assessments paid by way of a surcharge on premiums charged for insurance policies. Amounts recouped shall not be considered premiums for any other purpose, including the computation of gross premium tax or agents' commission.

¹³ Although New Jersey passes on assessments through policyholder surcharges, it was not specified how the New Jersey Workers' Compensation Security Fund passes on its assessments.

- Eliminate self-imposed penalties for late medical payments.

The definition of “covered claims” payable by CIGA excludes penalties caused by the acts of the insolvent insurer, but the increase in payment of a medical bill is tantamount to a penalty.

CHSWC recommends that the definition of “covered claims” exclude the increased amounts payable on a medical bill that is paid late, if the delay was due to the insolvent insurer. CHSWC also suggests clarifying that the limitation of remedies for delay is applicable regardless of date of injury and suggests improving the precision of the existing language referring to penalties for delay.

- Increase communication between the California Liquidation Office (CLO) and CIGA during all steps of the process but in particular during the liquidation and reinsurance process.

The draft Hays Insurance Industry Study found that although the California Department of Insurance (CDI) correctly keeps its financial solvency opinions confidential, it needs to work more closely with CLO and CIGA to provide early warning to those organizations so they can prepare for liquidation and transfer of claims as smoothly as possible.¹⁴

¹⁴ Draft report entitled “Study of the California Workers’ Compensation Insurance Market” by the Hays Companies for CHSWC, published September 2003.

UPDATE: THE CALIFORNIA WORKERS' COMPENSATION INSURANCE INDUSTRY

Background

In California, approximately two-thirds of the total payroll in the state has been covered for workers' compensation through insurance policies, while the remainder is through self-insurance. There are more than 100 private for-profit insurers and one public nonprofit insurer, the State Compensation Insurance Fund (SCIF).

These insurers are overseen by the California Department of Insurance (CDI), whose mission is to:

- Protect consumers and the financial security of injured worker benefits.
- Foster a vibrant, stable, marketplace.
- Maintain an open, equitable regulatory process.
- Enforce the law fairly and impartially.

To accomplish its principal objective of protecting insurance policy holders in the state, the CDI examines insurance companies to ensure that operations are consistent with the requirements of the Insurance Code.

The CDI, under appointment by the courts in order to provide for a stable and consistent insurance market, plays a significant role in conserving, rehabilitating or liquidating licensed California insurance companies that are financially distressed and insolvent. The agency's 2001 Strategic Plan specifies that one of its particular goals is to "minimize financial insolvencies of insurers."

Minimum Rate Law

Until a few years ago, California's workers' compensation insurance rates were regulated by the Insurance Commissioner (IC) under the minimum rate law passed in 1915. Under this law, an insurer could not issue, renew or continue workers' compensation insurance at premium rates that were less than the rates approved by the IC. The IC, through the CDI's statistical agent, the Workers' Compensation Insurance Rating Bureau (WCIRB), gathered and analyzed premium and losses data, classified businesses, did actuarial projections, and determined final, fully developed, premium rates that included all the costs of benefits and administrative overhead. The final premium could be lower depending on the dividends paid by insurers at the end of the policy period.

In 1993, the workers' compensation reform legislation repealed California's 80-year-old minimum rate law and replaced it beginning in 1995 with an open-competition system of rate regulation in which insurers set their own rates based on "pure premium advisory rates" developed by the WCIRB. These rates, approved by the IC and subject to annual adjustment, are based on historical loss data for more than 500 job categories.

Under this "open rating" system, these recommended, non-mandatory pure premium rates are intended to cover the average costs of benefits and loss-adjustment expenses for all employers in an occupational class and thus provide insurers with benchmarks for pricing their policies. Insurers typically file rates that are intended to cover other costs and expenses, including unallocated loss-adjustment expenses.

UPDATE: THE CALIFORNIA WORKERS' COMPENSATION INSURANCE INDUSTRY

Insurance Market Before Reform

California workers' compensation direct written premium peaked at nearly \$9 billion in 1993, the same year the legislature enacted a major overhaul of the system. Adoption of open rating, which took effect in January 1995, was a key provision of that reform.

However, beginning in mid-1993, prior to the conversion to open rating, the Legislature and the IC approved a series of rate decreases. The first, mandated by the Legislature, called for a reduction of 7 percent in workers' compensation rates. Then, with the state experiencing a major economic recession and workers' compensation claim frequency and claim costs declining for the first time in years, the IC followed the legislated rate reduction with a 12.7 percent reduction in January 1994 and a 16 percent reduction in October 1994, just before the minimum rate law was eliminated and open rating took effect. As a result, by 1994, statewide premium was down to \$7.7 billion, and by 1995, the year open rating took effect, written premium was already down to \$5.7 billion, a decline of over 35 percent in two years.

Insurance Market After Reform

Subsequent to the repeal of the minimum rate law effective January 1995, changes were noted in the actions of insurers and employers.

Price Competition

While declining claim costs and the mandated premium rate reductions initiated the decline in the total California workers' compensation premium, open rating apparently spurred competition among insurers seeking to retain or add to their market share. Some insurers attempted to increase their market share by writing coverage at low prices that eventually proved to be below loss costs. This deregulated market kept premium rates near their historic lows throughout the latter half of the 1990's, even though losses were no longer declining.

In addition, the commercial market was able to solicit and quote public agencies for the first time. Prior to open rating, a public agency could either insure with SCIF or self-insure. Since so few public agencies were insured previously, the WCIRB data on them was minimal and probably not representative, especially in urban areas. This caused some significant underpricing, which led public agencies, especially schools, to go back to full insurance.

Total premium volume did begin to edge up after 1995, as California's booming economy added many new jobs, driving up covered payroll. By 1997, however, industry-wide losses exceeded premiums, and the situation for many insurers was deteriorating. As the link between the price of insurance and loss costs became more and more tenuous, some insurers left the state, others ceased writing workers' compensation or were merged or acquired by other carriers, and still others, including several of the largest insurers in the state, became insolvent and had to be taken over or supervised by the state. As a result, the workers' compensation market became much more concentrated than in the past, with only a few insurers, aside from SCIF, which were mostly large, national carriers, accounting for the largest portion of statewide premium.

UPDATE: THE CALIFORNIA WORKERS' COMPENSATION INSURANCE INDUSTRY

Changing Insurers

WCIRB identified some trends in employers changing insurers' pre- and post-open rating. WCIRB estimates that before open rating, about 25 percent of California employers with experience modifications (ex-mods) changed insurance carriers each year. After open rating, about 35 percent of the employers did so, and the first quarter of 2001 shows that half of the employers changed carriers. It should be noted, however, that in many post-open rating cases, employers had no choice but to change insurers, as the market had deteriorated to the point that many carriers, including several of the largest workers' compensation insurers in the state, ceased to exist or stopped writing workers' compensation in California.

Reinsurance

After open rating, many carriers shifted the risk of their workers' compensation claims to other insurance companies, some of which were inexperienced with the California workers' compensation insurance market. According to Professor Aigner of the University of California at Santa Barbara and the Workers' Compensation Executive, many carriers used reinsurance aggressively in order to mitigate the risk of having to make large future payoffs. Backed by reinsurance treaties that lowered the reinsurance level to \$50,000 or less from the more typical \$500,000 to \$1 million, some primary workers' compensation carriers offered extremely low rates that proved to be inadequate in the face of soaring losses. Some reinsurance companies also sold off their risk to other reinsurers in a process called "retrocession." During 1999, several major reinsurance pools experienced financial difficulty and ceased operations.

Profitability of Insurance Companies

Profitability of insurance companies, as measured by the National Association of Insurance Commissioners, decreased with deregulation. In the late 1980's, workers' compensation insurers in California had profit levels of nearly three times the national average. With open rating, California insurers have lower-than-average profit margins and during the late 1990's had the lowest return in the nation. Several indicators, including those discussed below, pointed to a decrease in the profitability of the insurance industry.

Workers' Compensation Premiums

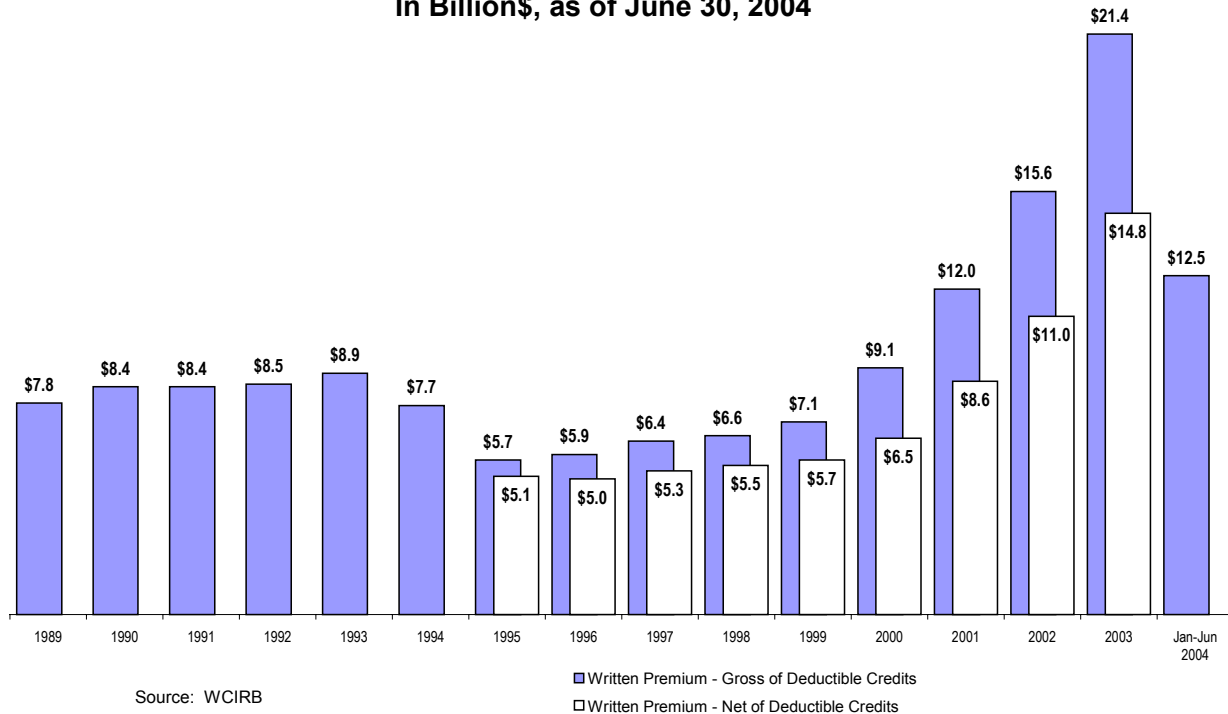
Immediately after the reform and elimination of the minimum rate law, in part from reasons discussed above, workers' compensation insurance premiums continued to decline. The total written premium declined from a high of \$8.9 billion in 1993 to a low of \$5.7 billion (\$5.1 billion net of deductible) in 1995. The written premium grew slightly from 1996 to 1999 due to growth of insured payroll, an increase in economic growth and movement from self-insurance to insurance and other factors, rather than due to increased rates. However, even with well over a million new workers covered by the system, the total premium paid by employers remained below the level seen at the beginning of the decade.

At the end of 1999, the IC approved an 18.4 percent pure premium rate increase for 2000, and the market began to harden after five years of open rating, though rates remained less than two-thirds of the 1993 level. Since then, the market has continued to firm, with the IC approving a 10.1 percent increase in the advisory rates for 2001 and a 10.2 percent increase for 2002. The WCIRB estimated total written premium is \$21.4 billion in 2003.

UPDATE: THE CALIFORNIA WORKERS' COMPENSATION INSURANCE INDUSTRY

The chart below shows the California workers' compensation written premium and a history of the workers' compensation pure premium advisory rates since the 1993 reforms. Please note that these amounts are exclusive of dividends.

**California Workers' Compensation Written Premium
In Billion\$, as of June 30, 2004**



California Workers' Compensation Rate Changes

As a result of recent workers' compensation legislative reforms and the subsequent decisions by the Insurance Commissioner (IC) on advisory premium rates (see the rate history for 2004 on the following pages), workers' compensation insurers have reduced their filed rates as indicated in the chart below.

The cumulative premium weighted average rate reduction filed is about 10 percent for those insurers that collectively have 80 percent of the market or 10.5 percent for all insurers. Broken down to account for Assembly Bill (AB) 227/Senate Bill (SB) 228 savings and SB 899 savings, filed rates were reduced 3.5 percent on January 1, 2004, and 7 percent on July 1, 2004.¹⁵

However, actual final rates charged in the market were reduced by 7 to 8 percent during the first quarter of 2004, indicating that insurers discounted their filed rates by approximately 4 percent beyond the filed rate reduction of 3.5 percent.¹⁶ This reduction did not yet reflect the savings

¹⁵ Source: Douglas G. Barker, J.D., Bureau Chief, California Dept. of Insurance Rate Filing Bureau.

¹⁶ Source: Dave Bellusci, Senior Vice President, Chief Actuary, California Workers' Compensation Insurance Rating Bureau (WCIRB).

UPDATE: THE CALIFORNIA WORKERS' COMPENSATION INSURANCE INDUSTRY

resulting from SB 899 and the July 1, 2004, advisory pure premium rate reduction. Therefore, if the same level of market discounting continues through the third quarter of 2004 as was apparent during the first quarter of 2004, actual rates charged in the market could reasonably be expected to be lower than the 10.5 percent filed reductions by a similar magnitude of approximately 4 percent and will likely reflect actual market reductions of 14 percent to 15 percent.

California Workers' Compensation Insurance Carrier Rate Filing Changes

<u>COMPANY NAME</u>	<u>GROUP NAME</u>	<u>Market share 2003</u>	<u>Cumulative % Change 1/1/04 to Present</u>	<u>07/01/ 2004 % Filed Rate Change</u>	<u>01/01/ 2004 % Filed Rate Change</u>
STATE COMPENSATION INSURANCE FUND		53.07%	-9.70%	-7%	-2.9%
EVEREST NATIONAL INSURANCE COMPANY	Everest Re Group	4.28%	-7.47%	-7%	-0.5%
ZENITH INSURANCE COMPANY	Zenith National Group	3.66%	-10.00%	-10%	0%
AMERICAN HOME ASSURANCE COMPANY	AIG Group	2.43%	-10.72%	-7%	-4%
ZURICH AMERICAN INSURANCE COMPANY	Zurich Insurance Group	1.65%	-17.47%	-10%	-8.3%
LIBERTY MUTUAL FIRE INSURANCE COMPANY	Liberty Mutual Group	1.39%	-17.12%	-12.2%	-5.6%
HARBOR SPECIALTY INSURANCE COMPANY	Hanover Group	1.36%	-7.00%	-7%	0%
REPUBLIC INDEMNITY COMPANY OF CALIFORNIA	Great American Group	1.30%	-20.86%	-7%	-14.9%
TRAVELERS CASUALTY AND SURETY COMPANY	Travelers Group	1.29%	-14.60%	-14.6%	0%
FEDERAL INSURANCE COMPANY	Chubb Group	1.28%	-10.95%	-3%	-8.2%
NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA	AIG Group	1.24%	-10.72%	-7%	-4%
VIRGINIA SURETY COMPANY, INC.	Aon Corporation	1.16%	-2.35%	-7%	5%
COMMERCE AND INDUSTRY INSURANCE COMPANY	AIG Group	1.10%	-10.72%	-7%	-4%
CLARENDON NATIONAL INSURANCE COMPANY	Hanover Group	1.00%	-7.00%	-7%	0%
ST. PAUL FIRE AND MARINE INSURANCE COMPANY	Travelers Group	0.98%	-14.63%	-7%	-8.2%
MID-CENTURY INSURANCE COMPANY	Zurich Insurance Group	0.96%	-13.60%	-10%	-4%
PREFERRED EMPLOYERS INSURANCE COMPANY	WR Berkley Group	0.92%	-7.00%	-7%	0%

The recent workers' compensation rate filing changes noted above could be one of the signs that the workers' compensation insurance market is becoming more stable and competitive.

UPDATE: THE CALIFORNIA WORKERS' COMPENSATION INSURANCE
INDUSTRY

**Advisory Workers' Compensation Rates:
A History Since the 1993 Reform Legislation
Part One: 1993 – 2000**

1993

Insurance Commissioner approved:

Pure premium rate reduction of 7 percent effective July 16, 1993, due to a statutory mandate.

1994

WCIRB recommendation:

No change in pure premium rates.

Insurance Commissioner approved:

Two pure premium rate decreases: a decrease of 12.7 percent effective January 1, 1994; and a second decrease of 16 percent effective October 1, 1994.

1995

WCIRB recommendation:

A 7.4 percent decrease from the pure premium rates that were in effect on January 1, 1994.

Insurance Commissioner approved:

A total of 18 percent decrease to the premium rates in effect on January 1, 1994, approved effective January 1, 1995 (including the already-approved 16 percent decrease effective October 1, 1994).

1996

WCIRB recommendation:

An 18.7 percent increase in pure premium rates.

Insurance Commissioner approved:

An 11.3 percent increase effective January 1, 1996.

1997

WCIRB recommendation:

A 2.6 percent decrease in pure premium rates.

Insurance Commissioner approved:

A 6.2 percent decrease effective January 1, 1997.

1998

WCIRB recommendation:

The initial recommendation for a 1.4 percent decrease was later amended to a 0.5 percent increase.

Insurance Commissioner approved:

A 2.5 percent decrease effective January 1, 1998.

1999

WCIRB recommendation:

The WCIRB initial recommendation of a 3.6 percent pure premium rate increase for 1999 was later amended to a recommendation for a 5.8 percent increase.

2000

WCIRB recommendation:

An 18.4 percent increase in the pure premium rate for 2000.

Insurance Commissioner approved:

An 18.4 percent increase effective January 1, 2000.

2001

WCIRB recommendation:

The WCIRB initial recommendation of a 5.5 percent increase in the pure premium rate later amended to a recommendation for a 10.1 percent increase.

Insurance Commissioner approved:

A 10.1 percent increase effective January 1, 2001.

UPDATE: THE CALIFORNIA WORKERS' COMPENSATION INSURANCE
INDUSTRY

**Advisory Workers' Compensation Pure Premium Rates
A History since the 1993 Reform Legislation
Part Two: 2001 - 2004**

2002

WCIRB recommendation:

The WCIRB initial recommendation of a 9 percent increase in the pure premium rate later amended to a recommendation for a 10.2 percent increase. WCIRB filed a mid-term recommendation that pure premium rates be increased by 10.1 percent effective July 1, 2002, for new and renewal policies with anniversary rating dates on or after July 1, 2002.

Insurance Commissioner approved:

A 10.2 percent increase effective January 1, 2002. On May 20, 2002, the Insurance Commissioner approved a mid-term increase of 10.1 percent effective July 1, 2002.

2003

WCIRB recommendation:

The WCIRB initial recommendation of 11.9 percent was later amended. WCIRB filed a mid-term recommendation on April 2, 2003, that pure premium rates be increased by 10.6 percent effective July 1, 2003, for new and renewal policies with anniversary rating dates on or after July 1, 2003.

Insurance Commissioner Approved:

A 7.2 percent increase in pure premium rates applicable to new and renewal policies with anniversary rating dates on or after July 1, 2003.

2004

WCIRB recommendation:

On July 30, 2003, WCIRB proposed an average increase in advisory pure premium rates of 12.0 percent to be effective on January 1, 2004, for new and renewal policies with anniversary rating dates on or after January 1, 2004.

The original WCIRB filing of an average increase of 12 percent on July 30, 2003, was later amended on September 29, 2003, to -2.9 percent to reflect the WCIRB's initial evaluation of AB 227 and SB 228.

In an amended filing made on November 3, 2003, the WCIRB recommended that pure premium rates be reduced, on average, from 2.9 percent to 5.3 percent.

On May 13, 2004, WCIRB proposed advisory pure premium rates that are approximately 13 percent to 15 percent less than the January 1, 2004, pure premium rates proposed by the WCIRB in its November 3, 2003, filing letter and represent a 2.9 percent decrease from the January 1, 2004, approved pure premium rates. These rates reflect the WCIRB's analysis of the impact of provisions of SB 899 on advisory pure premium rates.

On July 28, 2004, the WCIRB proposed advisory premium rates applicable to new and renewal policies with anniversary rating dates on or after January 1, 2005, that are, on average, 3.5 percent greater than the July 1, 2004, advisory pure premium rates approved by the insurance commissioner.

Insurance Commissioner Approved:

In a decision issued November 10, 2003, the Insurance Commissioner approved a total decrease of 14.9 percent in the workers' compensation pure premium rates that have been in effect since July 1, 2003. These rates will be applicable to new and renewal policies with anniversary rating dates on or after January 1, 2004. In a decision issued May 28, 2004, the Insurance Commissioner approved a total decrease of 20.9 percent in the workers' compensation pure premium rate effective July 1, 2003, compared to a proposed 17.4 percent decrease filed by the WCIRB. The Commissioners approved pure premium rates, effective July 1, 2004, with respect to new and renewal policies, reflecting a 7.0 percent decrease as compared to the approved January 1, 2004, pure premium rates.

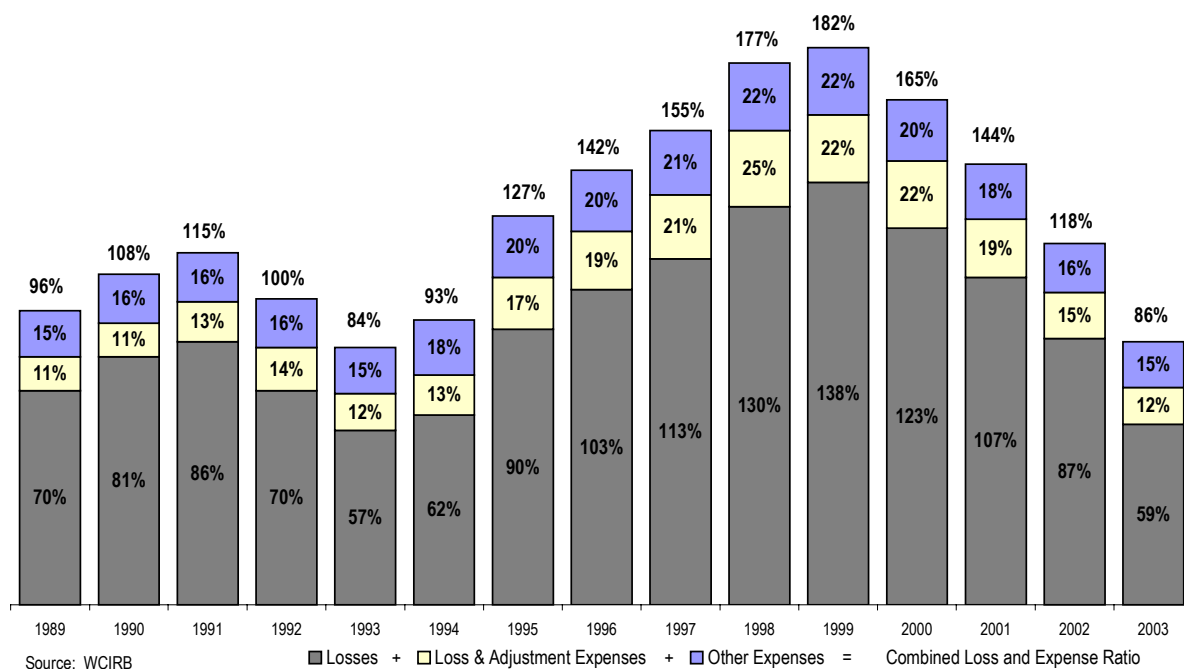
In a decision issued November 17, 2004, the Insurance Commissioner approved a total 2.2 percent decrease in advisory pure premium rates applicable to new and renewal policies with anniversary rating dates on or after January 1, 2005.

UPDATE: THE CALIFORNIA WORKERS' COMPENSATION INSURANCE INDUSTRY

Combined Loss and Expense Ratios

The accident-year combined loss and expense ratio, which measures workers' compensation claims payments and administrative expenses against earned premium, increased during the late 1990's and has been declining since that time. In accident-year 2003, insurers' claim costs and expenses amounted to \$0.86 for every dollar of premium they collected, which is the lowest combined ratio projected by WCIRB since the inception of competitive rating and reflects the estimated impact of AB 227 and SB 228 on unpaid medical losses.

**California Workers' Compensation Combined Loss and Expense Ratio
Reflecting the Impact of AB 227, SB 228 & SB 899
as of June 30, 2004**



Under-reserving

WCIRB estimates that the total cost of benefits on injuries occurring prior to January 1, 2004, exceeds insurer-reported loss amounts by \$7.1 billion. This figure, which may be symptomatic of reserve deficiencies for 2003, is down about 36 percent from 2002 and reflects the estimated impact of AB 227, SB 228, and SB 899 on unpaid losses.

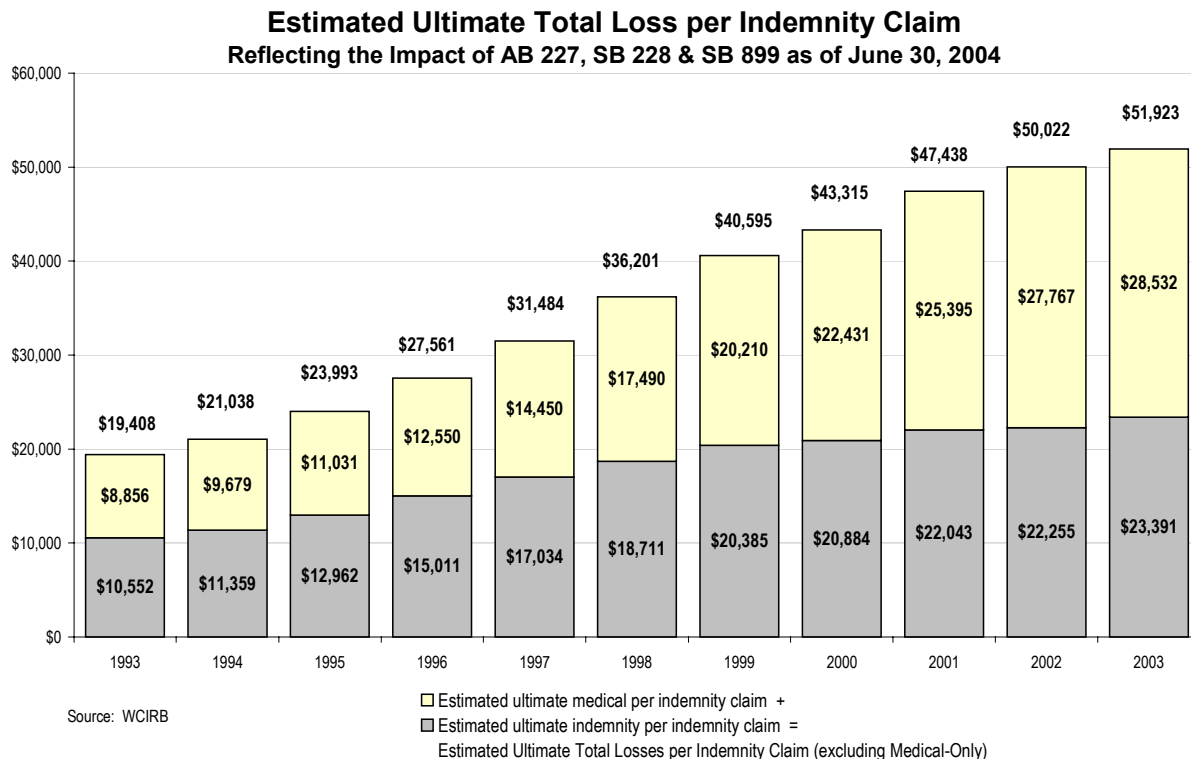
According to WCIRB, a major factor has been the increase in medical costs during the late 1990's and early 2000's.

In addition, according to many members of the workers' compensation community, these results are also explained, at least in part, by inadequate pricing due to an extremely competitive insurance market. According to WCIRB, for most of the second half of the 1990's, insurers were, on average, pricing their policies well below the pure premium rate level. (Pure premium rates provide only for losses and loss-adjustment expenses and include no provision for other insurer expenses.)

UPDATE: THE CALIFORNIA WORKERS' COMPENSATION INSURANCE INDUSTRY

Average Claim Costs

At the same time that premiums and claim frequency were declining, the total amount insurers paid on indemnity claims jumped sharply due to increases in the average cost of an indemnity claim, which rose dramatically during the late 1990's. According to WCIRB, both average indemnity and medical claim costs have shown increases over the past several years, as shown on the following graph.



Please note that WCIRB's estimates of average indemnity claim costs have not been indexed to take into account wage increase and medical inflation.

Current State of the Insurance Industry

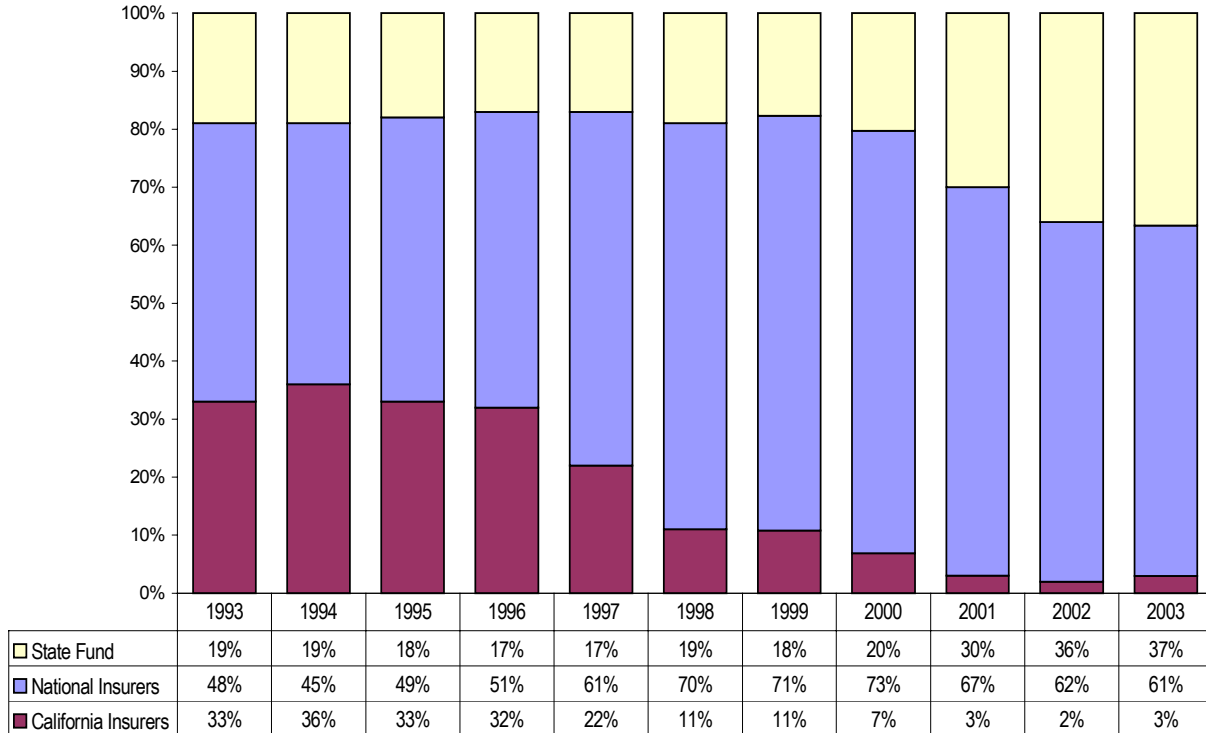
Market Share

A number of California insurers left the market or reduced their writings as a result of the decrease in profitability, contributing to a major redistribution of market share among insurers since 1993, as shown in the following chart.

According to WCIRB, California companies (excluding SCIF) insured just 3 percent of the California workers' compensation market in 2003, compared with 36 percent of the market in 1994. In 2003, SCIF attained 37 percent of the California workers' compensation insurance market, double the market share it had in the 1990's.

UPDATE: THE CALIFORNIA WORKERS' COMPENSATION INSURANCE INDUSTRY

**California Workers' Compensation Insurance Market Share
By Type of Insurer 1993-2003**



Source: WCIRB

Please note that totals may not equal 100% due to rounding.

"September 11" Impact on Insurance Industry

The recent problems in the reinsurance market caused by the events of September 11, 2001, have significantly affected the cost and availability of catastrophe reinsurance and, correspondingly, have a significant effect on the cost of workers' compensation insurance. This extends to more than acts of terrorism and is a critical component of any evaluation of the California workers' compensation insurance marketplace.

INSURANCE MARKET INSOLVENCY

Currently, several insurance companies are experiencing problems with payment of claims.

As indicated in the following listing, over 20 insurance companies have gone under liquidation since 2000.

UPDATE: THE CALIFORNIA WORKERS' COMPENSATION INSURANCE
INDUSTRY

COMPANY NAME

DATE OF LIQUIDATION

2000

California Compensation Insurance Company	9/26/2000
Combined Benefits Insurance Company	9/26/2000
Commercial Compensation Casualty Insurance Company	9/26/2000
Credit General Indemnity Company	12/12/2000
LMI Insurance Company	5/23/2000
Superior National Insurance Company	9/26/2000
Superior Pacific Insurance Company	9/26/2000

2001

Credit General Insurance Company	1/5/2001
Great States Insurance Company	5/8/2001
HIH America Compensation & Liability Insurance Company	5/8/2001
Amwest Surety Insurance Company	6/7/2001
Sable Insurance Company	7/17/2001
Reliance Insurance Company	10/3/2001
Far West Insurance Company	11/9/2001
Frontier Pacific Insurance Company	11/30/2001

2002

PHICO	2/1/2002
National Auto Casualty Insurance Company	4/23/2002
Paula Insurance Company	6/21/2002
Alistar Insurance Company	11/2/2002
Consolidated Freightways	9/2002

2003

Western Growers Insurance Company	1/7/2003
Legion Insurance Company	3/25/2003
Villanova Insurance Company	3/25/2003
Home Insurance Company	6/13/2003
Fremont General Corporation	7/2/2003
Wasatch Crest Insurance Co. (No WC policies)	7/31/2003
Pacific National Insurance Co.	8/5/2003

WORKPLACE SAFETY AND HEALTH

The 1993 reforms of the California workers' compensation system required Cal/OSHA to focus its consultative and compliance resources on "employers in high hazardous industries with the highest incidence of preventable occupational injuries and illnesses and workers' compensation losses."

High Hazard Employer Program

The High Hazard Employer Program (HHEP) is designed to:

- Identify employers in hazardous industries with the highest incidence of preventable occupational injuries and illnesses and workers' compensation losses.
- Offer and provide consultative assistance to these employers to eliminate preventable injuries and illnesses and workers' compensation losses.
- Inspect those employers on a random basis to verify that they have made appropriate changes in their health and safety programs.
- Develop appropriate educational materials and model programs to aid employers in maintaining a safe and healthful workplace.

In 1999, the passage of Assembly Bill (AB) 1655 gave the Department of Industrial Relations (DIR) the statutory authority to levy and collect assessments from employers to support the targeted inspection and consultation programs on an ongoing annual basis.

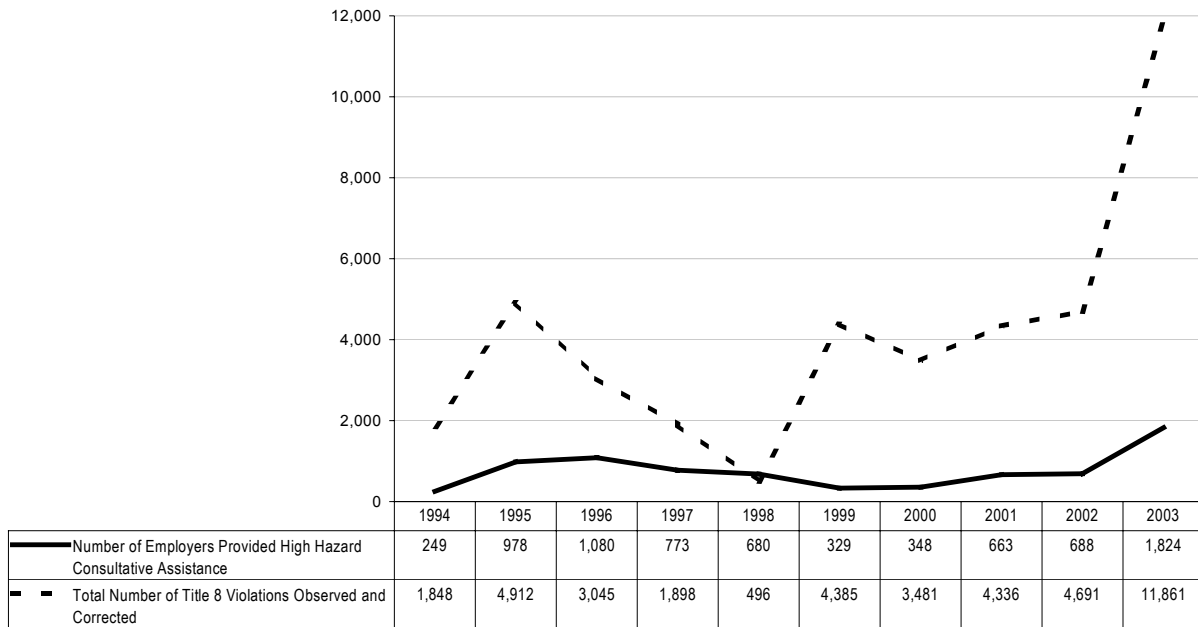
High Hazard Consultation Program

The Division of Occupational Safety and Health (DOSH) reports that in 2003, it provided on-site high hazard consultative assistance to 1,824 employers, as compared to 688 employers in 2002. During consultation with these employers, 11,861 Title 8 violations were observed and corrected as a result of the provision of consultative assistance. Since 1994, 7,612 employers have been provided direct on-site consultative assistance, and 40,953 Title 8 violations have been observed and corrected.

The following chart indicates the yearly number of consultations and violations observed and corrected during the years 1994-2003. It should be noted that effective 2002, the Safety and Health Inspection Projects (SHIPs) are included in the High Hazard Consultation Program figures.

WORKPLACE SAFETY AND HEALTH

High Hazard Consultation Program Production by Year



Source Division of Occupational Safety and Health

Beginning in 2000, the efficacy of high hazard consultative assistance is assessed through measurement of a high hazard employer's Lost Work Day Case Incidence (LWDI) Rate and an employer's Experience Modification Rating (ex-mod).

High Hazard Enforcement Program

DOSH reports that in 2003, 445 employers underwent a high hazard enforcement inspection, down from 529 employers in 2002. During these inspections in 2003, 2,129 violations were observed and cited, whereas in 2002, 1,926 violations were observed and cited.

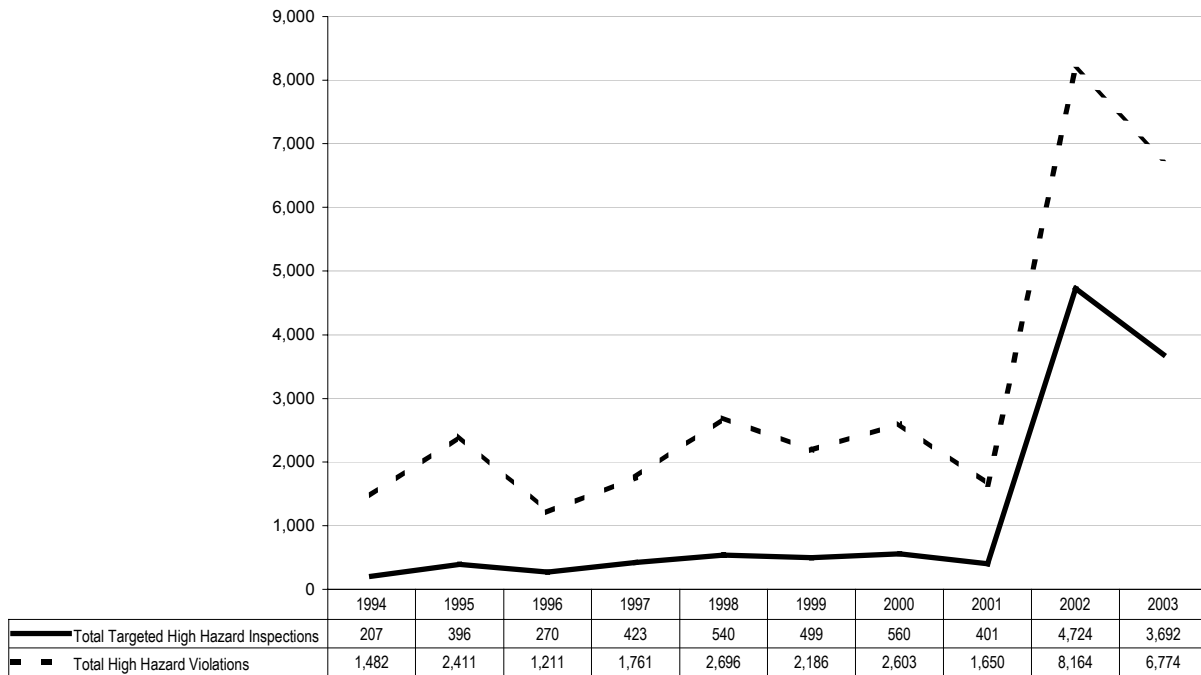
In addition, in 2003, 3,247 additional employers underwent an inspection as part of the Construction Safety and Health Inspection Project (CSHIP). During these inspections, 4,645 violations were observed and cited.

Since 1994, 11,712 employers have undergone a high hazard enforcement inspection, and 30,938 Title 8 violations have been observed and cited. Of these violations, 42.3 percent were classified as "serious."

The chart below indicates the yearly number of targeted inspections and violations observed and cited during the years 1994-2003. It should be noted that effective 2002, the Construction Safety and Health Inspection Projects (CSHIPs) are included in the High Hazard Enforcement Program figures.

WORKPLACE SAFETY AND HEALTH

High Hazard Enforcement Program Inspections and Violations



Source: Division of Occupational Safety and Health

Beginning in 2002, the efficacy of high hazard enforcement is assessed through measurement of a high hazard employer's LWDI. This provides for the same LWDI efficacy methodology being used for both high hazard consultation and enforcement.

For further information...



Additional information can be obtained by visiting the Cal/OSHA website at www.dir.ca.gov/DOSH or by e-mailing your questions or requests to InfoCons@dir.ca.gov.

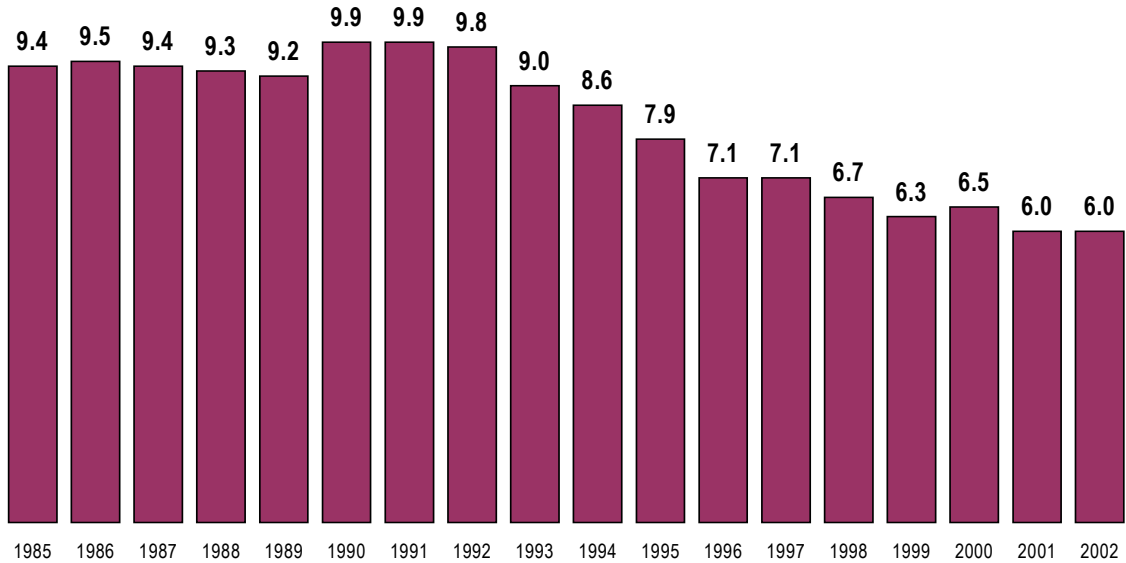
Non-fatal Injury and Illness Rates in California

From 1990 to 2002, the injury and illness rates in California declined from a high of 9.9 cases per 100 employees in 1990 and 1991 to 6.0 cases per 100 employees in 2002.

This improvement has been attributed to a number of factors, including shifts in the workforce, greater emphasis on workplace safety, continued efforts to combat workers' compensation fraud, and changes in employer reporting patterns.

WORKPLACE SAFETY AND HEALTH

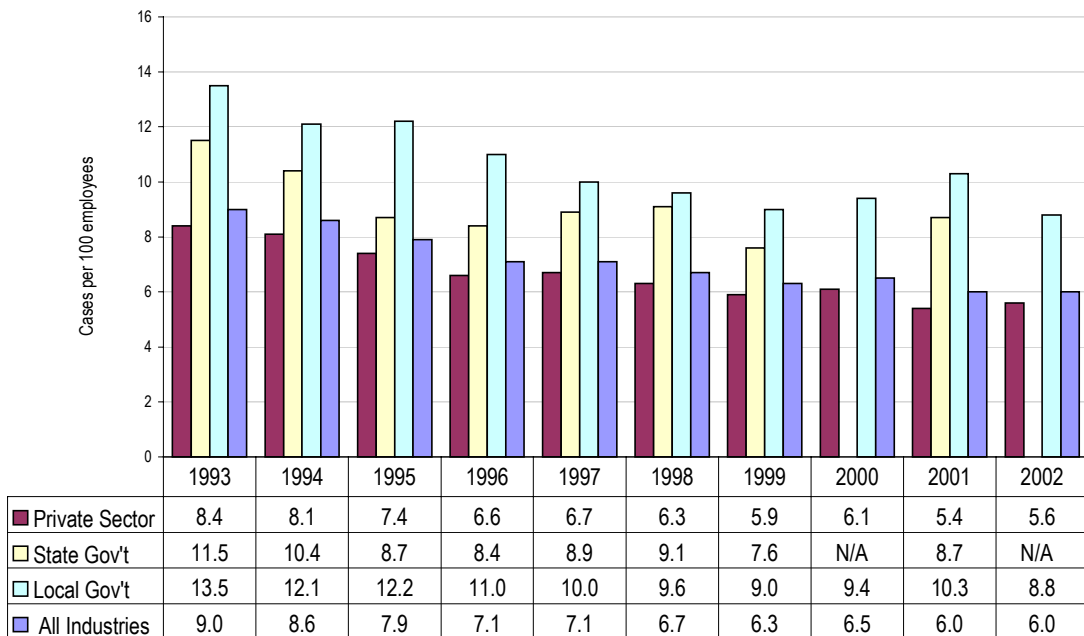
OSHA Injury and Illness Rates in California 1985-2002
(Cases per 100 employees)



Source: Division of Labor Statistics and Research (DLSR)

As shown on the following chart, the injury and illness rates for the public and private sectors are also declining.

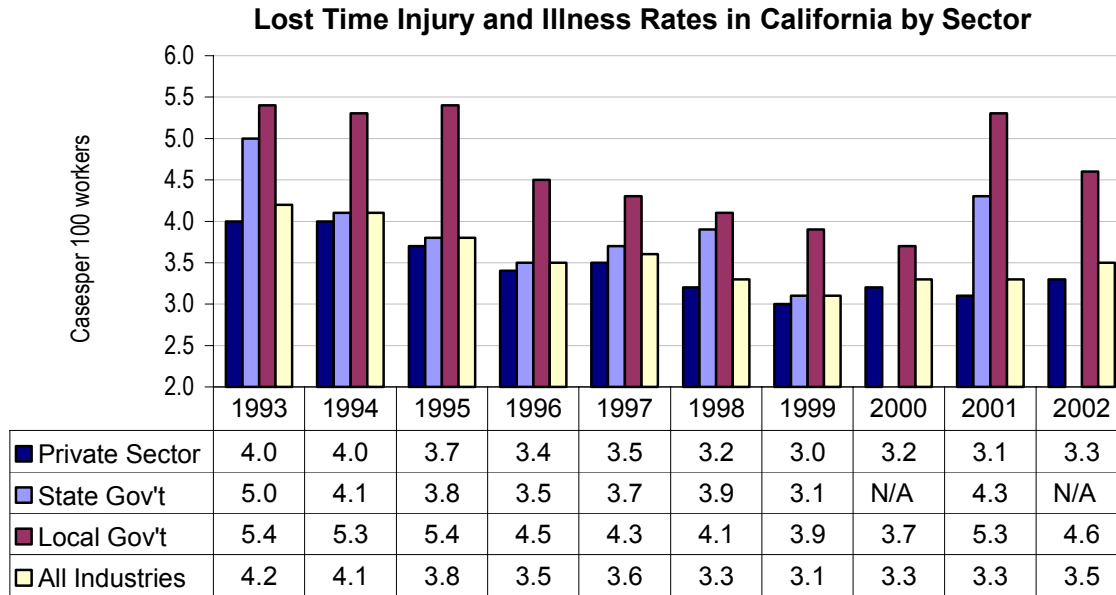
Occupational Injury and Illness Rates in California by Sector



Source: Division of Labor Statistics and Research (DLSR)

WORKPLACE SAFETY AND HEALTH

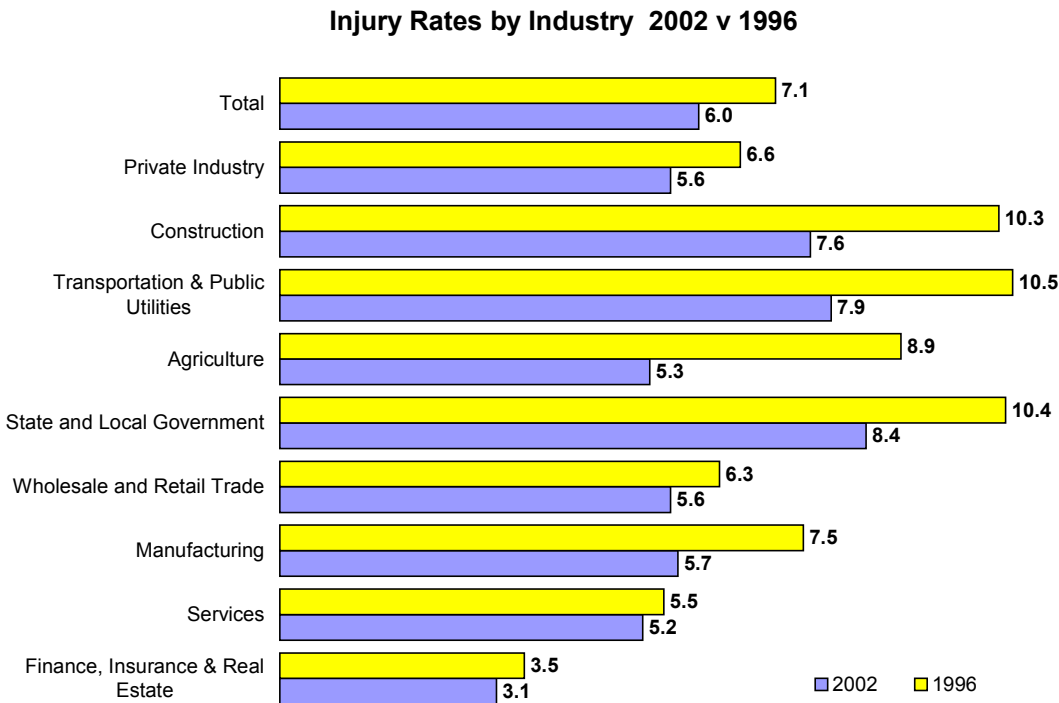
Lost-time injury rates have declined from 1993 to 1999 and have started to increase since 2000, especially in the public sectors.



Source: Division of Labor Statistics and Research

Non-fatal Occupational Injuries and Illness Days-away-from-work Rates by Industry

Injury and illness days-away-from-work rates in all industries declined between 1996 and 2002.



Source: Division of Labor Statistics and Research

Profile of Injury and Illness Statistics

Data for the following analyses, except where noted, were derived from the Department of Industrial Relations (DIR) Division of Labor Statistics and Research (DLSR), from the United States Department of Labor (DOL) Bureau of Labor Statistics (BLS) and from the California Workers' Compensation Institute (CWCI).

California and the Nation

Incidence Rates

California's most recent work injury and illness statistics (2002) indicate an injury and illness rate of 5.6 cases per 100 full-time employees in the private sector in 2002. This is a 40 percent decline from the 1990 peak level of 9.4 and an estimated 4 percent increase from the previous year's figures.

The above trend in California mirrors a national trend. DOL figures for private employers show that from 1990 to 2002, the work injury and illness rate across the U.S. fell from 8.8 to 5.3 cases per 100 employees in the private sector. The reduction in the number of incidences of job injuries is likely due to various factors including a greater emphasis on job safety, the improving economy since the early 1990's, and the shift from manufacturing toward service jobs.

From the Western region states (Alaska, Arizona, California, Hawaii, Nevada, Oregon and Washington), California's 2002 private-industry rate of 5.6 for non-occupational injuries and illnesses is the second lowest.¹⁷ The state with the lowest incidence rate of 5.0 in 2002 was Arizona.

Duration

Days-away-from-work cases, including those that result in days away from work with or without a job transfer or restriction, dropped from 2.1 to 1.8 cases per 100 full-time employees from 1996 to 2002 in the private sector. This also mirrors the national trend with the number of cases of days away from work falling from 2.2 to 1.6 cases in the national private sector with a similar decline as that of California.

In "State Report Cards for Workers' Compensation," published by the Work-Loss Data Institute, the Institute reported that the median days away from work in California and New York is 8 days, compared with the national average of 6 days.¹⁸

Industry Data

- In 2002, injury and illness incidence rates varied greatly between private industries ranging from 3.1 injuries/illnesses per 100 full-time workers in finance, insurance and real estate to 7.9 in transportation and public utilities. California's private industry rates for total cases were higher than the national rates in every major industry division, except for manufacturing and agriculture, forestry and fishing.

¹⁷ The comparisons of industry rates have not been adjusted for industry mix within each state.

¹⁸ http://www.odg-disability.com/pr_repsrc.htm

WORKPLACE SAFETY AND HEALTH

- While the private industry total case rate increased between 2001 and 2002, the rate for the public sector (state and local government) decreased 15 percent from 9.9 in 2001 to 8.4 in 2002.
- Over the past decade (1992-2002), the number of fatal injuries declined by about 27 percent, from 651 to 478. The number of fatal injuries declined by 25 percent since 1996. The number of fatal injuries decreased by 6 percent from 2001 to 2002. Injuries continued to decline in 2003 to 456 fatalities. The highest number of fatal injuries was in trade, transportation and utilities, closely followed by construction.
- In private industry, the top five occupations with the most non-fatal injuries and illnesses in descending order are: truck drivers, laborers (non-construction), janitors and cleaners, carpenters, and nursing aides, orderlies and attendants.
- Truck drivers, construction laborers, farm workers, ground maintenance workers and police officers were the occupations with the most number of fatal injuries in 2003. Transportation accidents were the number one cause of fatal injuries accounting for about 38 percent of fatal injuries in 2003.
- Assaults and violent acts accounted for about 18 percent of fatal injuries in 2003 and are a major cause of fatalities among sales workers, police, and taxi and truck drivers.
- California agriculture has the fourth-highest incidence rate for fatal injuries. The major cause for fatalities in agriculture is motor vehicles, accounting for 47 percent of the total, while the major causes for non-fatal injuries in this industry are “struck by” and “overexertion,” which together account for over 50 percent.¹⁹

Non-fatal and Fatal Occupational Injuries by Establishment Size and Type

- The lowest rate for total recordable non-fatal cases in 2002 was experienced by the smallest employers. Employers with 1 to 10 employees and 11 to 49 employees had incidence rates of 2.1 and 4.8 cases, respectively, per 100 full-time employees. Although small employers experienced the lowest incidence rates, they also experienced the biggest increase (20 percent) in their incidence rates since last year.
- Establishments with 50 to 249 and 250 to 999 employees reported the highest rate of 6.9 and 7.6 cases per 100 full-time employees.
- Establishments with 1,000 or more employees reported a rate of 6.7 per 100 full-time employees.
- Private-sector wage and salary workers accounted for 74 percent of fatal occupational injuries, followed by self-employed and government workers accounting for about 16 percent and 10 percent, respectively, of fatal injuries in 2003.

Types of Injuries

- Some types of work injuries have declined since 1996 in the private sector, while others have increased. The number of sprains and strains continued to decline from 1996, but these injuries remain by far the most common type of work injury accounting for about 39 percent of days-away-from-work cases in the private sector. Tendonitis, chemical burns, amputations, and multiple injuries have increased from 1996-2002 with the biggest increase, 39 percent, seen in amputations.

¹⁹ California Occupational and Environmental Health Division, UC Berkeley.

WORKPLACE SAFETY AND HEALTH

- Back injuries have decreased by about 12 percent since 1996 in the private sector, even though the back is the most frequently injured body part, accounting for almost 1 out of 4 days-away-from-work cases in the private sector and 1 out of 5 cases in local government.
- In the private sector, contact with objects and equipment was the leading cause of days-away-from-work injuries, cited in about 26 percent of days-away-from-work cases. Overexertion was the second common cause of injury, accounting for about 21 percent of injuries.
- In local government, the number one cause of injury was overexertion, accounting for 20 percent of local government's days-away-from-work cases in 2002.

Demographics

- Over the period from 1996 to 2002, the number of days-away-from-work cases for women decreased by about 4 percent. Days-away-from-work cases for men decreased by about 15 percent.
- Between 1996 and 2002, the youngest age groups (16 to 19, 20 to 24, 25 to 34, and 35 to 44) experienced a decline between 1996 and 2002 in non-fatal injuries. The biggest decline (49 percent) occurred among 16 to 19 year-old workers. All other age groups (45 to 54, 55 to 64, and 65 and over) experienced an increase in their days-away-from-work rates, with the biggest increase (74 percent) seen in the 65 years and over age group.
- In 2003, out of 456 fatalities, approximately 92 percent were male and 8 percent were female. Some age group categories – 18 to 19 years, 35 to 44 years, 65 years and over – experienced a decline in fatal injuries between 2002 and 2003, while others – 20 to 24 years and 25 to 34 years – experienced an increase. The biggest decline (48 percent) was seen in the 65 years and over age group and the biggest increase (36 percent) in the 20 to 24-year age group. The 55 to 64 age group did not experience an increase or a decline.
- The highest number of fatalities in 2003 by race or ethnic origin categories was experienced by “White, non-Hispanic” followed by “Hispanic or Latino,” accounting for 52 percent and 35 percent of the fatalities respectively. From 2002 to 2003, fatal injuries declined by 31 percent for the “Black, non-Hispanic” and by 9 percent for the “Hispanic or Latino”. Fatal injuries for the “White, non Hispanic” and “Asian” category remained the same since 2002.
- On the national level, the BLS reports that between 1995 and 2000, the Hispanic worker fatality rate was consistently above the overall national worker fatality rate. The reason for the higher incidence rates is that Hispanics are found working disproportionately in high-risk occupations. Occupations with the highest number of fatal injuries to Hispanics during 1995-2000 were construction laborers, truck drivers and farm workers.
- Between 1995 and 2000, California had the largest number of fatal work injuries, 1,112, to Hispanic native and foreign-born workers in the nation. Of these, 61 percent were injuries to Hispanic foreign-born workers.²⁰

²⁰ US Bureau of Labor Statistics, Census of Fatal Occupational Injuries

Ergonomics Standard

California Standard

Assembly Bill (AB) 110, a part of the 1993 worker's compensation insurance legislative reform, added Section 6357 to the Labor Code, which required the Occupational Safety and Health Standards Board (OSHSB) to adopt a standard "to minimize instances of injury from repetitive motion" by January 1995. The Board adopted the standard in November 1996, and following approval by the Office of Administrative Law (OAL), California Code of Regulations (CCR), Title 8, Section 5110, repetitive motion injuries (RMIs) became legally enforceable on July 3, 1997. In October 1999, following protracted litigation, the California Court of Appeal upheld the regulation with one exception. Specifically, the court struck the regulatory exemption for employers with less than ten employees.

In 1999, AB 1127 added Labor Code Section 6719, which reads as follows: "The Legislature reaffirms its concern over the prevalence of repetitive motion injuries (RMIs) in the workplace and reaffirms the continuing duty to carry out Section 6357" of the OSHSB Board.

On April 28, 2000, the ergonomic standard became effective in California. In February 2001, prior to Congress repealing the federal standard, the California Labor Federation submitted a request to the Board to revise Section 5110 (Petition 430) to incorporate the elements of the federal Ergonomics Program Standard, 29 CFR 1910.900. In July 2001, after considering this petition and the recommendations of DOSH and Board staff, the Board concluded that the Federal model did not offer a sound approach for revising California's ergonomic standard and denied the petition.

In February 2002, AB 2845 was introduced to amend Section 6357 of the Labor Code to require the Board to adopt revised standards for ergonomics in the workplace designed to minimize instances of injury from repetitive motion by July 1, 2003. In August 2002, the California Labor Federation submitted another request to the Board to revise Section 5110 (Petition 448). In September 2002, former Governor Gray Davis vetoed AB 2845 to allow the Board time to consider Petition 448 and evaluate the existing regulation and the merits of amending it.

In February 2003, the Board directed its staff to convene an advisory committee to consider proposed revisions to Section 5110.

In April 2003, the Board and Division staff convened an advisory committee to consider proposed revisions to Title 8, Section 5110 on RMIs. The committee reviewed and considered each of the items that the committee was directed to address in the Board's Petition Decision regarding Petition 448. There was no consensus on proposed revisions to Section 5110. Furthermore, there was general agreement that another meeting of the same group may not be useful.

In May 2003, the Board was briefed on the results of the advisory committee on Petition 448. The Board members discussed the possibility of having another advisory committee meeting and asked staff to proceed.

In March 2004, the Board, with three new members and a new Chair, was briefed on the history of the ergonomics issue. In addition to the interest in getting background on the issue, the item was placed on the March agenda based upon a question about convening another advisory committee. After the presentation, the Board members discussed the issue. No action was taken.

Federal Standard

In November 1999, the Federal Occupational Safety and Health Act (OSHA) introduced a proposed ergonomics standard, 29 CFR 1910.900, known as the Ergonomics Program Standard.

The Federal standard was finalized in November 2000 and became effective on January 16, 2001.

The standard was challenged in court with over 30 lawsuits.

In March 2001, Congress, for the first time, passed a Joint Resolution of Disapproval under the Congressional Review Act and repealed the Federal standard on March 21, 2001.

The Joint Resolution was signed, and Federal OSHA notified the States of the cancellation of OSHA's requirement to adopt an Ergonomics Program Standard comparable to the Federal standard.

On April 23, 2001, Federal OSHA published a notice in the Federal Register stating that the former 29 CFR 1910.900 was repealed as of that date.

Federal OSHA has announced a four-pronged approach to reducing ergonomic injuries based on:

- (1) Industry-specific or task-specific guidelines;
- (2) Enforcement under the general duty clause;
- (3) Outreach and assistance; and
- (4) Research.

Ergonomics Standard in California: A Brief History

January 18 and 23, 1996

OSHSB holds public hearings on the proposed ergonomics standard and receives over 900 comments from 203 commentors. The proposed standards are revised.

July 15, 1996

OSHSB provides a 15-day public comment period on revisions to proposed standards.

July 15, 1996

California Labor Federation, AFL-CIO, and American and California Trucking Associations file legal briefs with the Sacramento Superior Court in opposition to the ergonomics standard.

September 19, 1996

OSHSB discusses the proposal at its business meeting and makes further revisions.

October 2, 1996

OSHSB provides a 15-day public-comment period on the further revisions.

October 2, 1996

California Labor Federation, AFL-CIO, and American and California Trucking Associations file legal briefs with the Sacramento Superior Court in opposition to the ergonomics standard.

November 14, 1996

OSHSB adopts the proposal at its business meeting and submits it to the state Office of Administrative Law (OAL) for review and approval.

January 2, 1997

OAL disapproves the proposed regulations based on clarity issues.

February 25, 1997

OSHSB provides a 15-day public-comment period on new revisions addressing OAL concerns.

April 17, 1997

OSHSB adopts the new revisions and resubmits the proposal to OAL.

June 3, 1997

Proposed ergonomics standard is approved by OAL.

July 3, 1997

Ergonomics standard becomes effective.

September 5, 1997

Sacramento Superior Court holds a hearing to resolve the legal disputes filed by labor and business industries.

October 15, 1997

Judge James T. Ford of the Sacramento Superior Court issued a Peremptory Writ of Mandate, Judgment, and Minute Order relative to challenges brought before the Court. The Order invalidated the four parts of the standard.

Source: OSHSB

(Continued on next page)

Ergonomics Standard in California: A Brief History (continued)

December 12, 1997

OSHSB appealed Judge Ford's Order with its legal position that the Judge's Order would be stayed pending a decision by the Court of Appeal.

January 30, 1998

Judge Ford further ruled that his Order will remain in effect and not be stayed until the Court of Appeal hears the case.

March 13, 1998

The Third District Court of Appeal ruled that Judge Ford's Order to eliminate parts of Section 5110 would be stayed until the Court of Appeal issues a decision on the appeal filed in December 1997. The Standard is currently in effect and will remain in effect until the case is decided by the Court of Appeal.

October 29, 1999

After hearing the case in September, the Court of Appeal issued an opinion reversing the Superior Court's judgment. The Court of Appeal directed the Superior Court to issue a new judgment in accordance with the instructions contained in its final opinion. The Court struck the regulatory exemption for employers with less than 10 employees.

November 1999

Federal OSHA introduced a proposed ergonomics standard, 29 Code of Federal Regulations (CFR) 1910.900, known as the Ergonomics Program Standard.

March 15, 2000

The Superior Court issued the new judgment and a modified writ of mandate. In response to the court's instructions, the OSHA Standards Board filed a revision to Title 8, General Industry Safety Orders, Section 5110 of the California Code of Regulations (CCR) with the OAL.

April 28, 2000

The court-ordered revision of CCR Section 5110 was approved by OAL and was filed with the Secretary of State to be effective immediately.

November 2000

Federal OSHA ergonomics standard, 29 CFR 1910.900, known as the Ergonomics Program Standard, was finalized.

January 16, 2001

Federal OSHA ergonomics standard, 29 CFR 1910.900, known as the Ergonomics Program Standard, is effective.

February 2001

In February 2001, prior to Congress repealing the Federal standard, the California Labor Federation submitted a request to the Board to revise Section 5110 (Petition 430) to incorporate the elements of the former Federal Ergonomics Program Standard, 29 CFR 1910.900.

March 21, 2001

In March 2001, Congress, for the first time, passed a Joint Resolution of Disapproval under the Congressional Review Act and repealed the Federal Standard on March 21, 2001. The Joint Resolution was signed, and Federal OSHA notified the States of the cancellation of OSHA's requirement to adopt an Ergonomics Program Standard comparable to the Federal Standard.

Source: OSHSB

(Continued on next page)

Ergonomics Standard in California: A Brief History (continued)

April 23, 2001

On April 23, 2001, Federal OSHA published a notice in the Federal Register stating that the former 29 CFR 1910.900 was repealed as of that date.

July 2001

In July 2001, after considering the California Labor Federation petition and the recommendations of DOSH and Board staff, the Board concluded that the Federal model did not offer a sound approach for revising California's ergonomic standard and denied the petition.

February 2002

In February 2002, Assembly Bill (AB) 2845 was introduced to amend Section 6357 of the Labor Code to require the Board to adopt revised standards for ergonomics in the workplace designed to minimize the instances of injury from repetitive motion by July 1, 2003.

August 2002

In August 2002, the California Labor Federation submitted another request to the Board to revise Section 5110 (Petition 448).

September 2002

In September 2002, former Governor Gray Davis vetoed AB 2845 to allow the Board time to consider Petition 448, to evaluate the existing regulation and the merits of amending it.

February 2003

In February 2003, the Board directed staff to convene an advisory committee to consider proposed revisions to Section 5110.

April 2003

In April 2003, the Board and Division staff convened an advisory committee to consider proposed revisions to Title 8, Section 5110 on repetitive motion injuries (RMIs). The committee reviewed and considered each of the items that the committee was directed to address in the Board's Petition Decision regarding Petition 448. There was no consensus on proposed revisions to Section 5110. Furthermore, there was general agreement that another meeting of the same group may not be useful.

May 2003

In May 2003, the Board was briefed on the results of the advisory committee on Petition 448. The Board members discussed the possibility of having another advisory committee meeting and asked staff to proceed.

March 2004

In March 2004, the Board, with three new members and a new Chair, was briefed on the history of the ergonomics issue. In addition to the interest in getting background on the issue, the item was placed on the March agenda based upon a question on convening another advisory committee. After the presentation, the Board members discussed the issue. No action was taken.

Source: OSHSB

SPECIAL REPORT: WORKER OCCUPATIONAL SAFETY AND HEALTH TRAINING AND EDUCATION PROGRAM (WOSHTEP)

Background

California has an exciting opportunity to serve as a national leader in worker protection and injury and illness prevention. Labor Code Section 6354.7 provides for the creation of a Workers' Safety and Health Training and Education Fund (WOSHEF), administered by the Commission on Health and Safety and Workers' Compensation (CHSWC). This fund is used to establish and maintain a Worker Occupational Safety and Health Training and Education Program (WOSHTEP).

Purpose and Objectives

The purpose of WOSHTEP is to promote awareness of the need for safety and health prevention programs. The program focuses on developing and providing injury and illness prevention skills for employees and their representatives who take a leadership role in promoting safety and health in the workplace. This program will be delivered through a statewide network of providers.

CHSWC's mandate for WOSHTEP is to:

- Develop and provide a core curriculum addressing competencies for effective participation in workplace injury and illness prevention programs and on joint labor-management health and safety committees.
- Develop and provide additional training for any and all of the following categories:
 - Industries on the high hazard list.
 - Hazards that result in significant worker injuries, illnesses or compensation costs.
 - Industries or trades where workers are experiencing numerous or significant injuries or illnesses.
- Provide health and safety training to occupational groups with special needs, such as those who do not speak English as their first language, workers with limited literacy, young workers, and other traditionally underserved industries or groups of workers.
- Give priority to training workers who are able to train other workers and workers who have significant health and safety responsibilities, such as those serving on health and safety committees or serving as designated safety representatives.
- Operate one or more libraries and distribution systems of occupational safety and health training material.
- Prepare an annual report, developed by the advisory board, evaluating the use and impact of the programs.

SPECIAL REPORT: WORKER OCCUPATIONAL SAFETY AND HEALTH TRAINING AND EDUCATION PROGRAM (WOSHTEP)

Funding

Pursuant to Labor Code Section 6354.7(a), insurance carriers who are authorized to write workers' compensation insurance in California are assessed \$100 or .0286 percent, whichever is greater, of paid workers' compensation indemnity amounts for claims reported for the previous calendar year to the Workers' Compensation Insurance Rating Bureau (WCIRB). This assessment is then deposited into the WOSHEF. CHSWC uses these funds for the development and implementation of WOSHTEP.

Project Team

CHSWC has contracted with the Labor Occupational Safety and Health (LOSH) Program at the University of California, Los Angeles, and the Labor Occupational Health Program (LOHP) at the University of California, Berkeley, to design and carry out needs assessments with key constituencies, develop curriculum and conduct pilot training. CHSWC has also contracted with San Francisco State University (SFSU) to help prepare an evaluation plan and report.

Labor-Management Advisory Board

A labor-management Advisory Board for WOSHTEP is mandated by legislation and has been established. The role of this Advisory Board is to:

- Guide development of curricula, teaching methods and specific course material about occupational safety and health.
- Assist in providing links to the target audience.
- Broaden partnerships with worker-based organizations, labor studies programs and others that are able to reach the target audience.
- Prepare an Annual Report evaluating the use and impact of WOSHTEP.

WOSHTEP Accomplishments

Needs Assessment

CHSWC recognizes the important role that key stakeholders, including employers, labor, educators, insurers, governmental agencies, and community-based organizations, play in determining the success of WOSHTEP.

Therefore, CHSWC, LOSH, and LOHP have conducted needs assessment activities with over 100 representatives from key constituency groups. These needs assessments are designed to provide direction for development of core and supplemental curriculum and implementation of pilot training programs statewide.

Curriculum Development

The Worker Occupational Safety and Health (WOSH) Specialist curriculum is designed to build knowledge and skills in many areas of injury and illness prevention. Participants are required to successfully complete core training (six modules), plus a minimum of three supplemental modules relevant to their workplace, in order to be recognized as WOSH Specialists.

SPECIAL REPORT: WORKER OCCUPATIONAL SAFETY AND HEALTH TRAINING AND EDUCATION PROGRAM (WOSHTEP)

Core Curriculum

The core curriculum addresses competencies for effective participation in workplace injury and illness prevention programs and on joint labor-management health and safety committees.

The core curriculum consists of the following modules:

- Promoting Effective Safety Programs: An Introduction to WOSHTEP
- Identifying Hazards in the Workplace
- Controlling Hazards in the Workplace
- Health and Safety Rights and Responsibilities
- Workers' Compensation and Return-to-Work Programs
- Resources and Strategies for Taking Action

Supplemental Modules

Supplemental modules have been developed to address the needs of the participants of the pilot training courses conducted this year. These modules cover the following topics:

- Biohazards
- Chemical Hazards and Hazard Communication
- Communicating Effectively About Workplace Health and Safety
- How Adults Learn Best
- Introduction to Ergonomics
- Joint Labor-Management Health and Safety Committees

An additional two modules were drafted this year but have not yet been finalized:

- Back Injury Prevention
- Lockout/Blockout/Tagout

Pilots

Ongoing needs assessments identified the importance of piloting the training program with diverse populations and in different settings due to the differences in size of employers, languages and types of industry in California.

Four different settings were selected to pilot the curriculum. LOSH conducted pilot trainings with a light manufacturing company and worker advocacy groups in Los Angeles. LOHP conducted pilot training with homecare workers in San Francisco and a multi-industry group in the Bay Area.

Continuing discussions with stakeholders are taking place about conducting training with special populations, including immigrant workers and young workers.

Resource Library

Libraries in northern and southern California have been established to house and act as distribution systems of occupational safety and health training material, including, but not limited to, all materials developed by the program. These libraries serve as resource centers to provide information and technical assistance to support trained WOSH Specialists and WOSHTEP trainers.

SPECIAL REPORT: WORKER OCCUPATIONAL SAFETY AND HEALTH TRAINING AND EDUCATION PROGRAM (WOSHTEP)

Website

A CHSWC-housed WOSHTEP website has been created to promote public access and awareness of WOSHTEP and products developed for the program. These materials include a WOSHTEP fact sheet, multilingual resource list, survey of state, national and international training programs, and other resources developed for the training.

Database

CHSWC maintains a database of all trainers, WOSH Specialists, course information and certificates awarded. The database assists in tracking all participants in the program and consequently, assists with the evaluation process.

Future Plans

Training

CHSWC's training partners, LOSH and LOHP, will plan and implement a minimum of ten WOSH Specialist courses for the 2004-05 fiscal year. These courses, averaging 15 participants per class, will be held in a variety of locations for high-priority worker populations throughout California. Partnerships are being developed with local, non-profit organizations, community colleges and universities, and SCIF to assist in implementation of these training courses.

WOSHTEP Trainers

LOHP will develop a training-of-trainers course to begin to establish a statewide network of trainers as mandated by the statute. These trainers will complete the training-of-trainers course to learn effective training skills and become familiar with teaching the modules. They will complete an apprenticeship that will include teaching a minimum of two classes with a master trainer.

Delivery Structure

The program envisions a statewide network of trainers who can become certified to offer the curriculum. Outreach is being conducted to identify trainers interested in participating in WOSHTEP. Expansion of the trainer network will include development of a training-of-trainers curriculum, mentoring and co-training with new trainers, and partnering with community colleges and other organizations. Ways to build a network among the trainers to encourage and facilitate the exchange of information will be explored.

After completing the initial 24-hour course, WOSH Specialists will be invited to attend a refresher course each year for an update on new health and safety issues and to share field experiences.

Employer Participation

As part of outreach to employers, at least six short awareness trainings will be held to promote employer interest and participation in WOSHTEP. Additionally, LOSH Youth Peer Educators will conduct prevention-awareness outreach sessions to limited English-speaking and/or immigrant workers. These workers will be encouraged to share what they have learned with their employers in order to promote provision of the full 24-hour WOSHTEP course to a group of workers on-site. CHSWC, LOSH, and LOHP will work with the WOSHTEP Advisory Board,

SPECIAL REPORT: WORKER OCCUPATIONAL SAFETY AND HEALTH TRAINING AND EDUCATION PROGRAM (WOSHTEP)

training-of-trainers participants, needs assessment stakeholders and others to prioritize employer groups who would most benefit from awareness trainings.

Development of Small Business Model

LOHP is working in conjunction with the California Restaurant Association (CRA), State Compensation Insurance Fund (SCIF), Cal-OSHA Consultation and possibly a local community-based partner to develop a small business alternative training model. Activities will include needs assessment, development and design of appropriate materials, and a training-of-trainers curriculum for employers who will, in turn, train their employees on key health and safety topics. Materials will be industry-specific and organized as short, practical modules utilizing a "tailgate" training model.

Training Materials in Other Languages and Multilingual Materials

The multilingual resource list developed by LOHP will be updated and maintained regularly. Training handouts are being translated into Spanish and Chinese and, in future years, other languages as needed and as funding allows.

Evaluation Plan

An evaluation plan has been developed by SFSU to measure the effectiveness of the pilot programs and subsequent training efforts. A final synthesis report and recommendations will be developed.

Strategic Plan

A Strategic Implementation Plan will be developed.

SPECIAL REPORT:

KEEPING CALIFORNIA'S YOUTH SAFE ON THE JOB

Updated Recommendations of the California Partnership for Young Worker Health and Safety

Purpose of the California Partnership for Young Worker Health and Safety

The California Partnership for Young Worker Health and Safety was established in 1997 by the Commission on Health and Safety and Workers' Compensation (CHSWC). Its purpose is to find ways to reduce work-related injuries and illnesses among youth in California's workforce, as well as to develop young workers' health and safety skills and to promote positive and safe employment for young workers. The Partnership brings together 30 representatives from key agencies and organizations that are involved with California youth employment and education issues or that can otherwise play a role in educating and protecting young workers. Members include representatives from government agencies, parent organizations, teacher organizations, employer groups, and others.

The Partnership was established because young workers are being injured on the job in alarming numbers -- often at rates that are higher than for adult workers, even though youth under age 18 are protected from doing the most hazardous kinds of work. Coordinated efforts are needed to educate youth, employers, parents, and teachers and to strengthen enforcement of health and safety and child labor laws.

Accomplishments

In 1998, the Partnership released its first set of recommendations for better protecting and educating California's young workers. Over the past six years, the Partnership and its members have begun implementing several key recommendations and have made significant advances on 12 of the 25 recommendations. Through these accomplishments, tens of thousands of youth, employers, parents and teachers have received training or information on workplace health and safety and how to keep youth safe on the job. Key accomplishments include:

- **California Resource Network for Young Worker Health and Safety.** Assembly Bill (AB) 1599, passed in September 2000, established the California Resource Network for Young Worker Health and Safety. The Network is made up of nine organizations with direct access to teachers, employers, and youth. With core funding from CHSWC, the Network provides coordinated outreach and information to organizations and individuals throughout California, through its website, www.youngworkers.org, toll-free phone line, and direct training, mailings, and outreach by all the Network members.
- **Safe Jobs for Youth Month.** Now in its seventh year, this annual public awareness campaign reaches thousands of teachers, youth and employers, with teaching kits, media reports, teen poster and journalism contests, and special local events and training.

- **Curricula for Teachers.** Several targeted workplace health and safety training curricula have been developed by Network members, the Labor Occupational Safety and Health (LOSH) Program at the University of California, Los Angeles, and the Labor Occupational Health Program (LOHP) at the University of California, Berkeley. These curricula are distributed to thousands of educators, including work experience educators, WorkAbility teachers, job trainers, school-to-career teachers, and many others.
- **Institutionalized Training for Teachers.** Training for teachers on how to teach job health and safety using these curricula has been institutionalized for WorkAbility teachers and as part of the annual training conferences of the California Association of Work Experience Educators (CAWEE).
- **Outreach to Employers.** Materials have been developed and outreach conducted, reaching thousands of employers of young workers. Materials include the *Facts for Employers* fact sheet, *Tools for Orienting Worksite Supervisors*, the *California Work-Based Learning Tool Kit and Quick Guides*, and web-based information at www.youngworkers.org, and at www.scif.com.
- **Identifying Opportunities for Interagency Collaboration.** Partnership members have met with key agency leadership from the Departments of Education, Industrial Relations, and Health to identify opportunities for interagency collaboration. Several agencies have increased their focus on young worker issues, and a pilot collaborative project was initiated.
- **Improving Work Permit Systems.** Through promotional efforts, primarily on the part of CAWEE and Department of Education staff, many school districts have improved their own district work permit systems by sending more staff for training, adopting computer-based work permit systems, and providing information to youth and/or employers on labor and health and safety laws.

Updating Recommendations

Partnership members agreed that it was time to revise and update the 1998 recommendations and to establish new priorities for the group's work. During late 2003 and early 2004, subcommittees met to review accomplishments and draft revisions to the recommendations.

In March 2004, a working symposium was organized to seek additional input on the draft recommendations. The one-day symposium, "Young Workers at Risk: Planning for Action," included 20 Partnership members and 55 community members representing teachers, employers, job trainers and youth. Fifteen youth participants, who included occupational health peer educators from LOSH's Young Worker Project and youth recruited from work experience programs, attended a half-day meeting the day before to learn more about the issues and to prepare for their involvement during the meeting. Participants discussed new and existing recommendations and suggested priorities. The recommendations were finalized at a statewide Partnership meeting in June 2004. The Partnership will use these recommendations and the priorities identified as a basis both for joint work conducted by Partnership members and to promote efforts to be undertaken by specific agencies and organizations outside the work of the Partnership.

The 33 recommendations developed by the Partnership are organized in the following categories:

- School-based Strategies.
- Initiatives in the Workplace.
- Strategies in the Community.
- Strengthening the Role of Work Permits.
- Strategies for Enforcement Agencies.
- Need for Further Research.

Key Recommendations

Partnership members and Symposium participants agreed that for outreach and education for youth, employers, teachers and parents are key and that the efforts of the Resource Network and the annual Safe Jobs for Youth Month campaign should continue to provide the foundation for the Partnership's work and should be expanded. This work is reflected in the following two recommendations:

- **Identify adequate and permanent support for the Resource Network for Young Worker Health and Safety** (Recommendation #15).

With core funding from CHSWC and extensive in-kind contributions from Network members, current Resource Network services include:

- Coordination of Safe Jobs for Youth Month public awareness campaign.
- Maintenance of a comprehensive website with information for all key audiences, at www.youngworkers.org.
- Staffing of a toll-free hotline to answer questions and provide technical assistance on health and safety and child labor law questions.
- Ongoing outreach, education and training workshops by Resource Network members for thousands of educators, youth and employers.

If additional resources were available, Network members could develop new materials, materials could be translated into more languages, and Network members could expand innovative programs for teaching about workplace health and safety and other workplace issues, such as peer education programs, throughout the state.

- **Identify ongoing support and resources for the statewide "Safe Jobs for Youth Month" campaign to continue to raise public awareness of child labor laws and workplace health and safety issues faced by young workers** (Recommendation #16).

More resources, partners, and specific activities need to be developed and promoted, especially at the local level, to extend the reach of this campaign. Having a "hook" or kick-off activity for the campaign is essential.

Priority Work Areas – Short-Term

In addition, based on input from the March 24, 2004 Symposium, Partnership members have selected the following four priority areas to work on over the next one to two years:

- **Integrating workplace health and safety into K-12 education** (Recommendation #2). The Partnership's focus will be on finding ways to integrate information on workplace health and safety and child labor laws into state curriculum frameworks, as well as related testing, graduation requirements, and approved lists of teaching resources. Promotion of existing teaching curricula by Resource Network members at both the state and local level will also continue.
- **Developing and distributing industry-specific educational materials for employers and young workers** (Recommendations #9 and #12). Partnership members will focus on two industries: restaurants and grocery stores, with a focus on smaller-sized workplaces and on developing materials for immigrant employers. Two pilot projects have been initiated by several Partnership members.
- **Developing a plan for involving youth in planning, educating and advocating for workplace health and safety at the local and statewide level** (Recommendation #21). Partnership members will recruit and train a group of youth planners, with the goal of holding a statewide meeting for youth, within the next one to two years. The objective of this work is to actively engage youth in planning and conducting educational and advocacy strategies to promote workplace health and safety, in order to: (1) promote youth leadership development and increase their participation in workplace problem-solving and civic discussion of workplace issues; and (2) help develop effective education, outreach and advocacy strategies that are more relevant to and guided by youth themselves.
- **Improving work permit systems** (Recommendation #21). The initial focus will be on encouraging more schools to distribute basic, easy-to-read health and safety information to the student, parent, and employer as part of the work permit system, in particular by integrating information resources into computerized systems that are now used by about half of the state's school districts. Relevant Partnership members will continue to work together to encourage and assist school districts to be in compliance with existing work permit requirements.

Priority Work Areas – Long-Term

Other priorities identified at the Symposium, which the Partnership will explore further in the next two to five years include:

- **Promoting local collaboration between employers, community-based youth development organizations, school programs, and local labor and health and safety enforcement or consultation staff** (Recommendation #17). Participants in the March 24, 2004 Symposium saw the value of bringing together at the local level the various agencies that share responsibility for protecting and educating young workers. The objective of this collaboration is to increase local sharing of information and

resources and to increase the effectiveness of local education and enforcement efforts.

- **Implementing opportunities for interagency collaboration** (Recommendations #26, #27 and #28). Once new agency leadership has been appointed, the Partnership will review previously identified strategies for interagency work with the new leadership and identify possible pilot projects, such as joint education and enforcement efforts, or cross-training and increased sharing of information.
- **Developing a multi-faceted, comprehensive employer outreach plan** (Recommendation #7). Partnership members will continue to test different ways to reach employers, including through the two pilot projects listed above, with the goal of developing a comprehensive plan in the next several years. This plan may include distribution of information through business license offices, through employer organization meetings, conferences, and newsletters, and through the annual Safe Jobs for Youth Month public awareness campaign.

The California Partnership for Young Worker Health and Safety has been a national leader in the effort to protect young workers from being injured on the job and to prepare young people to take an active role in workplace health and safety as adult workers. Several other states have formed their own statewide young worker “teams” and have modeled many of their efforts after the work being done in California. While there is a great deal of work still to be done, many young workers have already benefited from the training and increased attention to young worker health and safety that have grown directly out of the Partnership’s collective efforts.

WORKERS' COMPENSATION SYSTEM PERFORMANCE

Introduction

The Commission on Health and Safety and Workers' Compensation (CHSWC) monitors the overall performance of the entire health and safety and workers' compensation system to determine whether it meets the State's Constitutional objective to "accomplish substantial justice in all cases expeditiously, inexpensively, and without encumbrance of any character."

In this section, CHSWC has attempted to provide performance measures to assist in evaluating the system impact on everyone, particularly workers and employers.

Through studies and comments from the community, CHSWC has compiled the following information pertaining to the performance of California's systems for health, safety and workers' compensation. Brief interpretations are provided with the graphical representations.

The first subsection deals with how well the system is operating in terms of the volume of workload and the timeliness of actions. These factors affect both employers and employees. The second subsection discusses the costs, which are of particular interest to employers. The impact on workers in terms of benefits and outcomes is the focus of the third subsection.

Administrative Operations

- Division of Workers' Compensation (DWC) Opening Documents
- Division of Workers' Compensation Hearings
- Division of Workers' Compensation Decisions
- Division of Workers' Compensation Lien Decisions
- Vocational Rehabilitation Plan Approvals and Disapprovals
- Vocational Rehabilitation Decisions and Orders After Conference
- Vocational Rehabilitation Plan Outcomes
- Division of Workers' Compensation Audits
- Disability Evaluation Unit
- Information and Assistance Unit
- Division of Worker' Compensation Staffing

Adjudication Simplification Efforts

- Division of Workers' Compensation Information System
- Carve-outs – Alternative Workers' Compensation Systems

Costs

- Workers' Compensation Premium
- Insured and Self-insured Employer Expenditures
 - Indemnity
 - Medical Benefits
 - Average Cost per Claim by Type of Injury
- Private-sector Self-insured Employer Expenditures
- Vocational Rehabilitation Costs

WORKERS' COMPENSATION SYSTEM PERFORMANCE

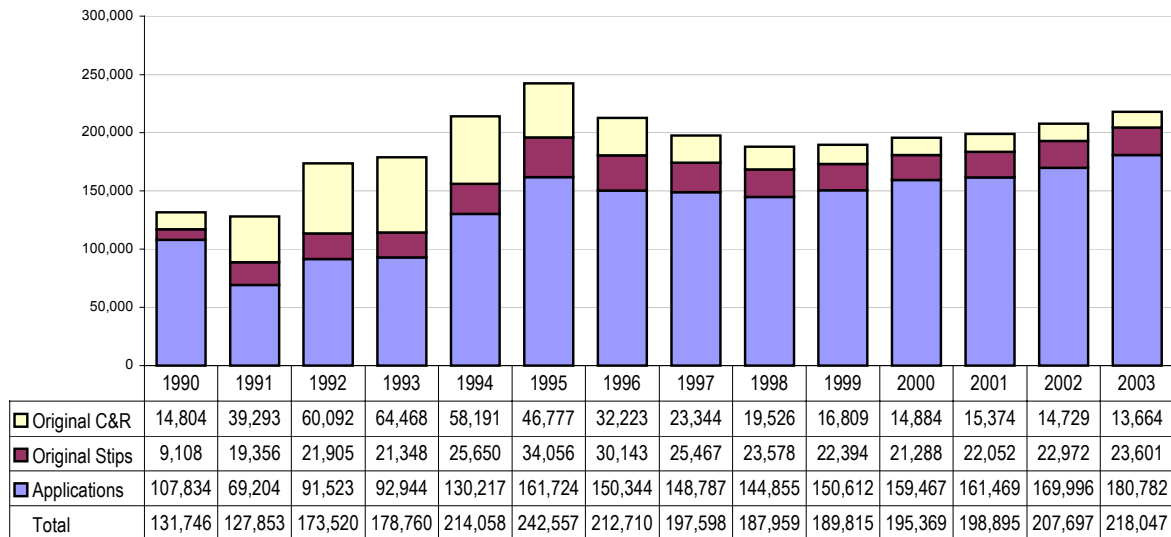
Administrative Operations

Division of Workers' Compensation Opening Documents

Three types of documents open a Workers' Compensation Appeals Board (WCAB) case. The chart below shows the numbers of Applications for Adjudication of Claim (Applications), Original Compromise and Releases (C&Rs), and Original Stipulations (Stips) received by the DWC.

The number of documents filed with the DWC to open a WCAB case on a workers' compensation claim has fluctuated during the early- and mid-1990's, leveled off during the late 1990's, increased slightly between 2000 and 2002, and increased again slightly between 2002 and 2003.

DWC Opening Documents



Source: Division of Workers' Compensation (DWC)

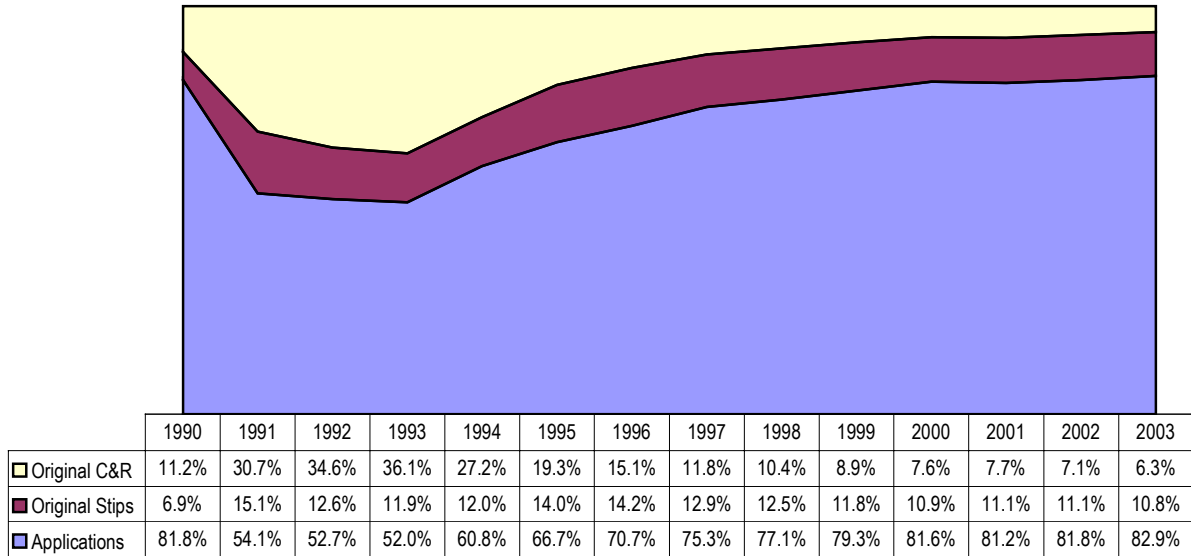
The period from 1991 to 1992 shows growth in all categories of case-opening documents, followed by a year of leveling off between 1992 and 1993. The period from 1993 to 1995 is one of substantial increases in Applications, slight increases in Stips and significant decreases in C&Rs. Since that time, Stips and C&Rs continued to decline, while Applications have increased slightly.

WORKERS' COMPENSATION SYSTEM PERFORMANCE

Mix of Opening Documents

As shown in the graph below, the proportion or "mix" of the types of case-opening documents received by the DWC varied during the 1990's.

DWC Opening Documents Percentage of Total



Source: DWC

Applications initially dropped from about 80 percent of the total in 1990 to less than 60 percent in 1991, reflecting increases in both original Stips and C&Rs. The numbers of Applications were steady from 1991 to 1993, and then rose again through 2003. The proportion of original (case-opening) Stips and original C&Rs declined slightly from 1999 to 2003.

Division of Workers' Compensation Hearings

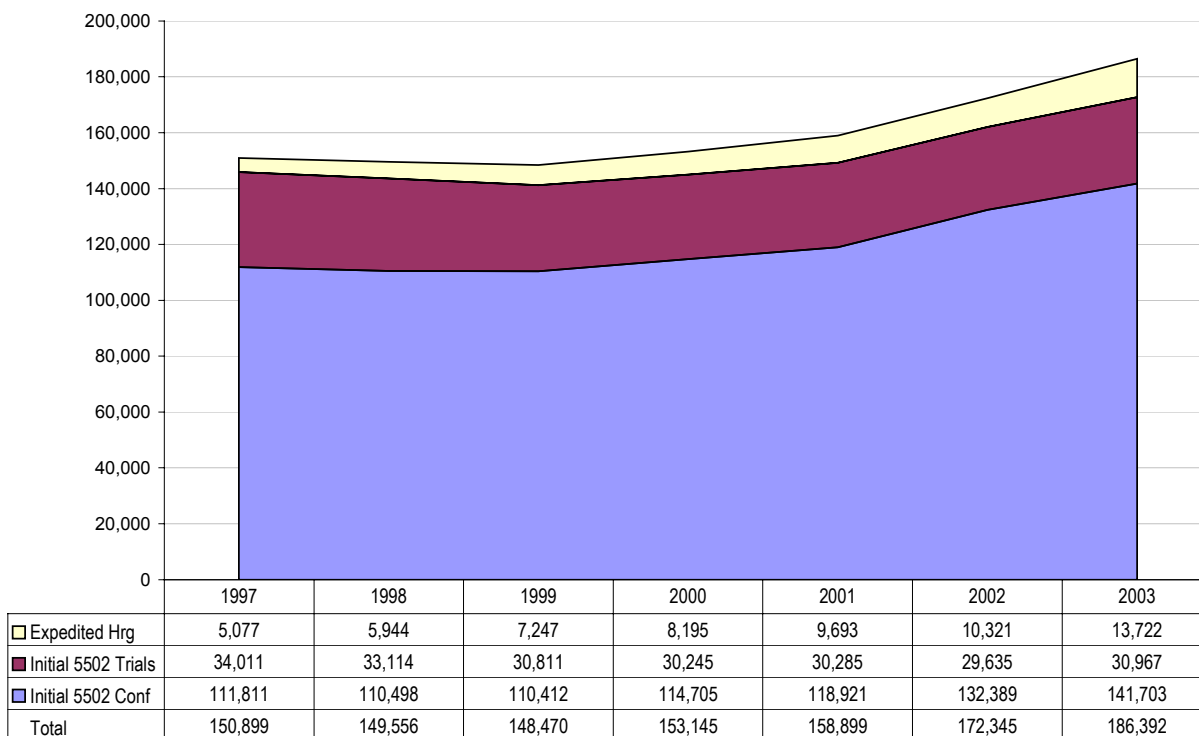
Numbers of Hearings

The chart below indicates the numbers of different types of hearings held in DWC from 1997 through 2003. Expedited hearings for certain cases, such as determination of medical necessity, may be requested pursuant to Labor Code Section 5502(b). Per Labor Code Section 5502(d), Initial 5502 Conferences are to be conducted in all other cases within 30 days of the receipt of a Declaration of Readiness (DR), and Initial 5502 Trials are to be held within 75 days of the receipt of a DR if the issues were not settled at the Initial 5502 Conference.

While the total number of hearings held increased slightly (23.5 percent) from 1997 to 2003, the number of expedited hearings held grew by about 170 percent during the same period.

WORKERS' COMPENSATION SYSTEM PERFORMANCE

DWC Hearings Held



Source: DWC

Timeliness of Hearings

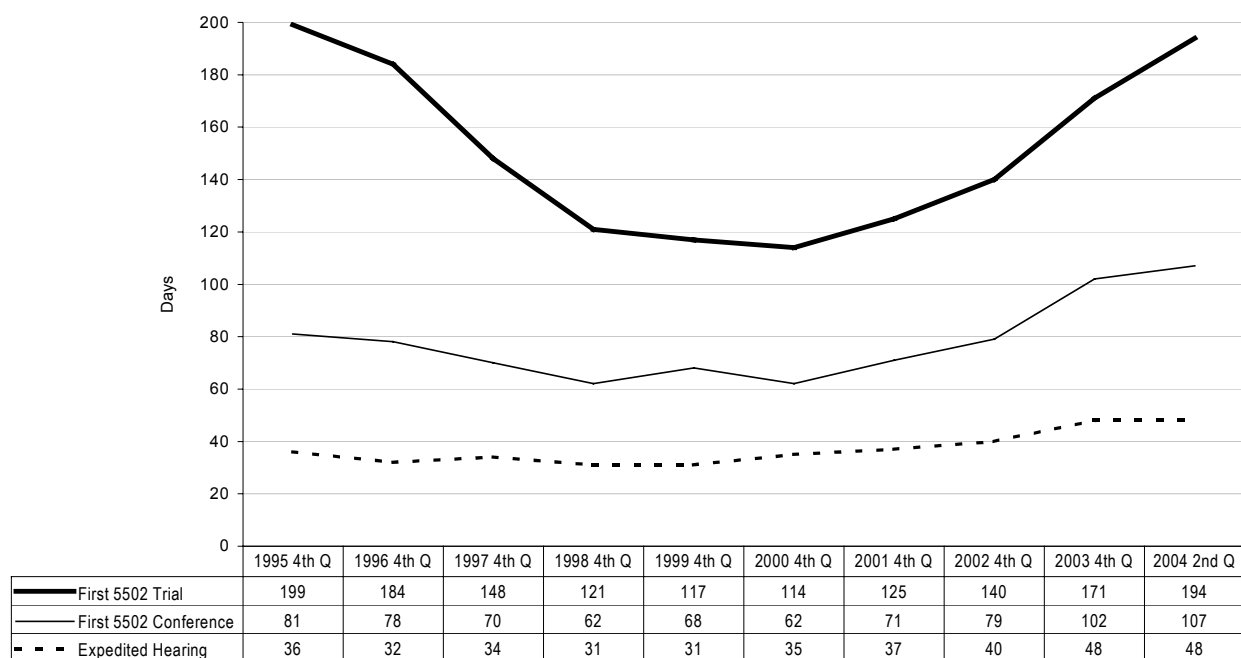
California Labor Code Section 5502 specifies the time limits for various types of hearings conducted by the DWC on WCAB cases.

In general:

- A conference is required to be held within 30 days of the receipt of a request in the form of a DR.
- A trial must be held either within 60 days of the request or within 75 days if a settlement conference has not resolved the dispute.
- An expedited hearing must be held within 30 days of the receipt of the DR.

WORKERS' COMPENSATION SYSTEM PERFORMANCE

Elapsed Time in Days from Request to DWC Hearing



Source: DWC

As the above chart shows, the average elapsed time from a request to a DWC hearing decreased in the mid- to late-1990's and then remained fairly constant thereafter. Nevertheless, as of 2003, all of the average elapsed times have increased from the previous year's quarter, and none are within the statutory requirements.

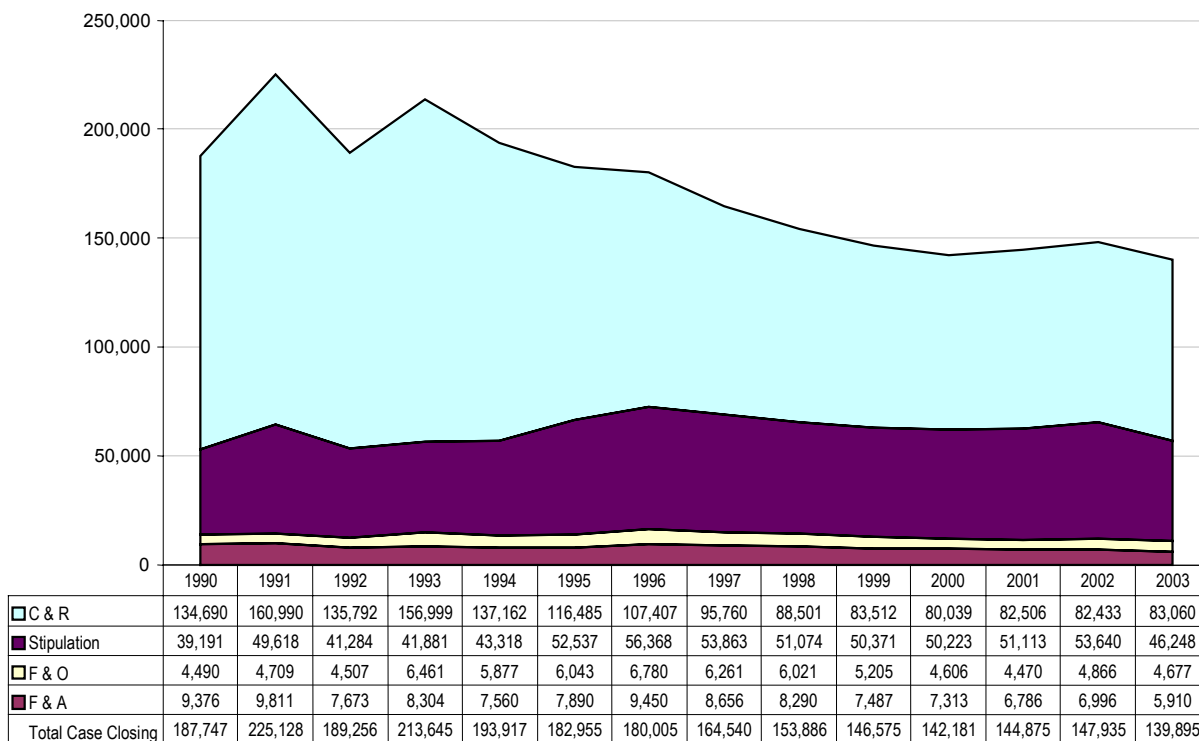
Division of Workers' Compensation Decisions

Division of Workers' Compensation Case-closing Decisions

The following data indicate that the number of decisions made by the DWC that are considered to be case-closing have declined overall during the 1990's, with a slight increase from 2000 to 2002, followed by a decrease in 2003.

WORKERS' COMPENSATION SYSTEM PERFORMANCE

DWC Case-closing Decisions



Source: DWC

- The numbers of Findings and Awards (F&As) have shown an overall decline of 36.5 percent from 1990 to 2003.
- Findings and Orders (F&Os) increased during the first part of the decade and then declined to the original level in 2002, decreasing slightly from 2002 to 2003.
- Stips were issued consistently throughout the decade. The numbers of Stips issued rose from 1990 to 1991, declined from 1991 to 1992, leveled off from 1992 to 1994, rose again in 1995 and 1996, remained stable through 2000, increased slightly in 2001 and 2002, and decreased in 2003.
- The use of C&Rs decreased by half during the 1990's and into the millennium. C&Rs declined steadily from 1993 through 2000, increased in 2001, and remained stable in 2002 and 2003.

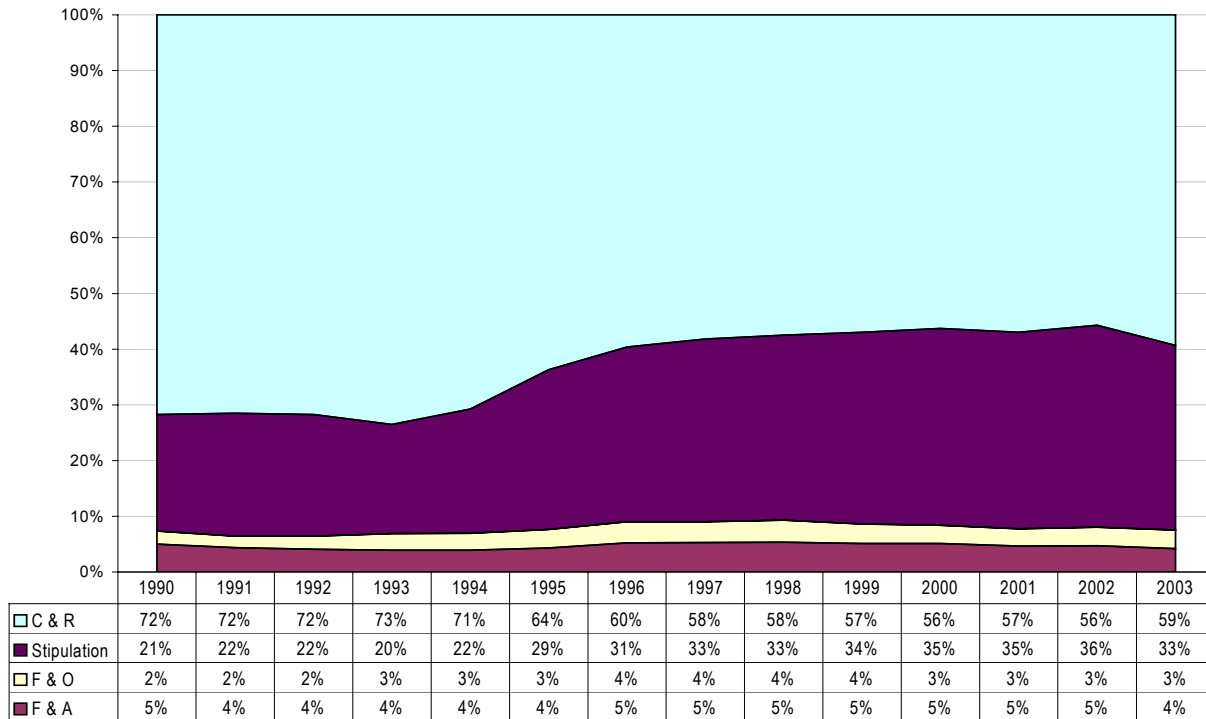
Mix of Division of Workers' Compensation Decisions

As shown on the charts on the previous page and the following page the vast majority of the case-closing decisions rendered during the 1990's were in the form of a WCAB judge's approval of Stips and C&Rs which were originally formulated by the case parties.

Only a small percentage of case-closing decisions evolve from an F&A or F&O issued by a WCAB judge after a hearing.

WORKERS' COMPENSATION SYSTEM PERFORMANCE

DWC Decisions Percentage distribution by type of decision



Source: Division of Workers' Compensation

During the period from 1993 through the beginning of 2000 and beyond, the proportion of Stips rose, while the proportion of C&Rs declined. This reflects the large decrease in the issuance of C&Rs through the 1990's.

Division of Workers' Compensation Lien Decisions

The DWC has been dealing with a large backlog of liens filed on WCAB cases. Many of the liens have been for medical treatment and medical-legal reports.

However, liens are also filed to obtain reimbursement for other expenses:

- The Employment Development Department (EDD) files liens to recover disability insurance indemnity and unemployment benefits paid to industrially injured workers.
- Attorneys have an implied lien during representation of an injured worker. If an attorney is substituted out of a case and seeks a fee, the attorney has to file a lien.
- District Attorneys file liens to recover spousal and/or child support ordered in marital dissolution proceedings.
- Occasionally, a landlord or grocer will claim a lien for living expenses of the injured or his/her dependents.

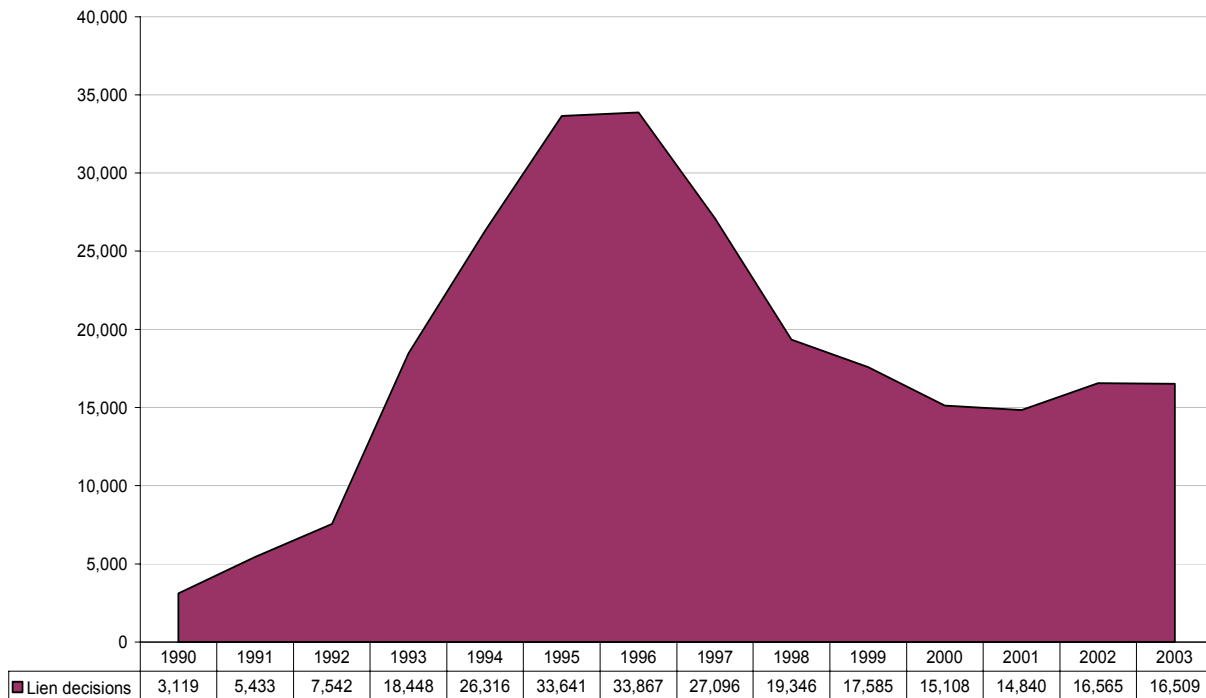
WORKERS' COMPENSATION SYSTEM PERFORMANCE

- Although it is relatively rare now, occasionally, a private disability insurance policy will file a lien on workers' compensation benefits on the theory that the proceeds from the benefits were used for living expenses of the injured worker.
- Some defendants will file liens in lieu of petitions for contribution where they have paid or are paying medical treatment costs to which another carrier's injury allegedly contributed.
- Liens are sometimes used to document recoverable (non-medical) costs, e.g., photocopying of medical records, interpreters' services and travel expenses.

These data indicate a large growth in decisions regarding liens filed on WCAB cases and a concomitant expenditure of DWC staff resources on the resolution of those liens.

Labor Code Section 4903.05, added by Senate Bill (SB) 228, requires that a filing fee of \$100 be charged for each initial lien filed by a medical provider, excluding the Veterans Administration, the Medi-Cal program, or public hospitals. SB 899 amended Section 4903.05 to provide that persons filing liens on behalf of medical providers may also pay the \$100 filing fee.

DWC Lien Decisions



Source: Division of Workers' Compensation

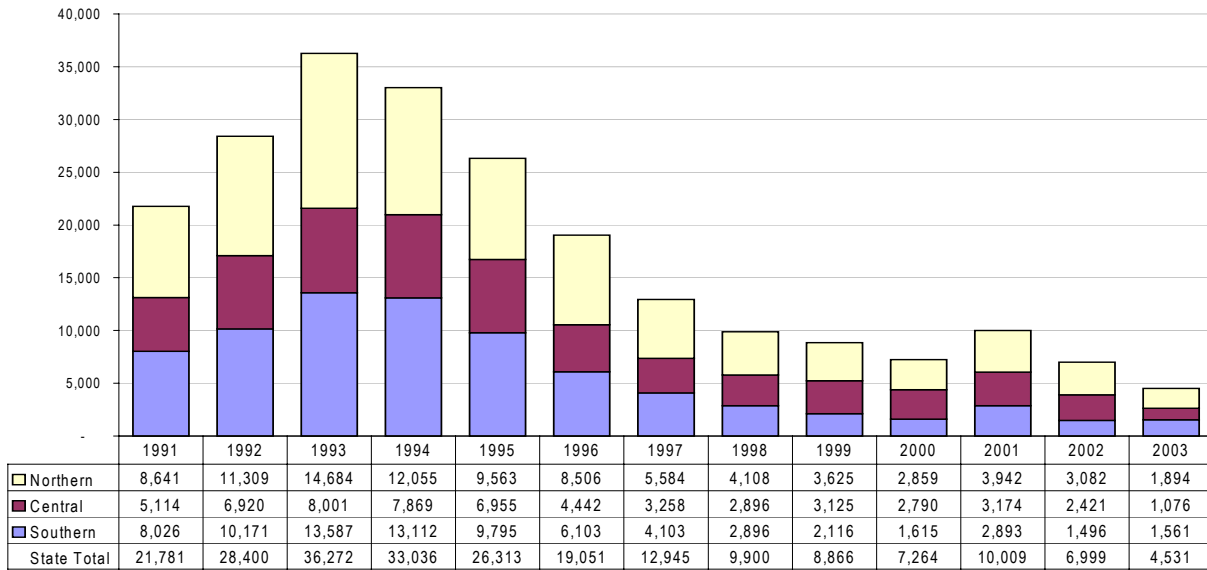
WORKERS' COMPENSATION SYSTEM PERFORMANCE

Vocational Rehabilitation Decisions

Vocational Rehabilitation Plan Approvals and Disapprovals

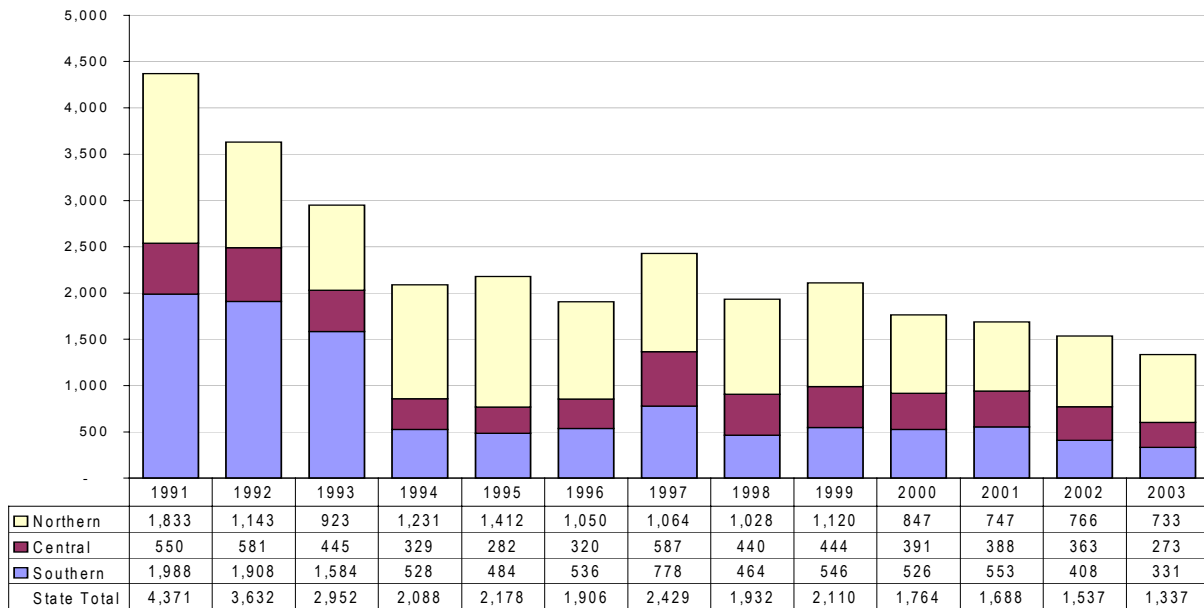
The number of vocational rehabilitation plans approved by the DWC has declined steadily from 1993 to 2000, increased in 2001, declined again in 2002, and remained fairly constant from 2002 to 2003.

DWC Vocational Rehabilitation Plan Approvals



Source: Division of Workers' Compensation

Vocational Rehabilitation Plan Disapprovals



Source: DWC

WORKERS' COMPENSATION SYSTEM PERFORMANCE

Vocational Rehabilitation Decisions and Orders After Conference

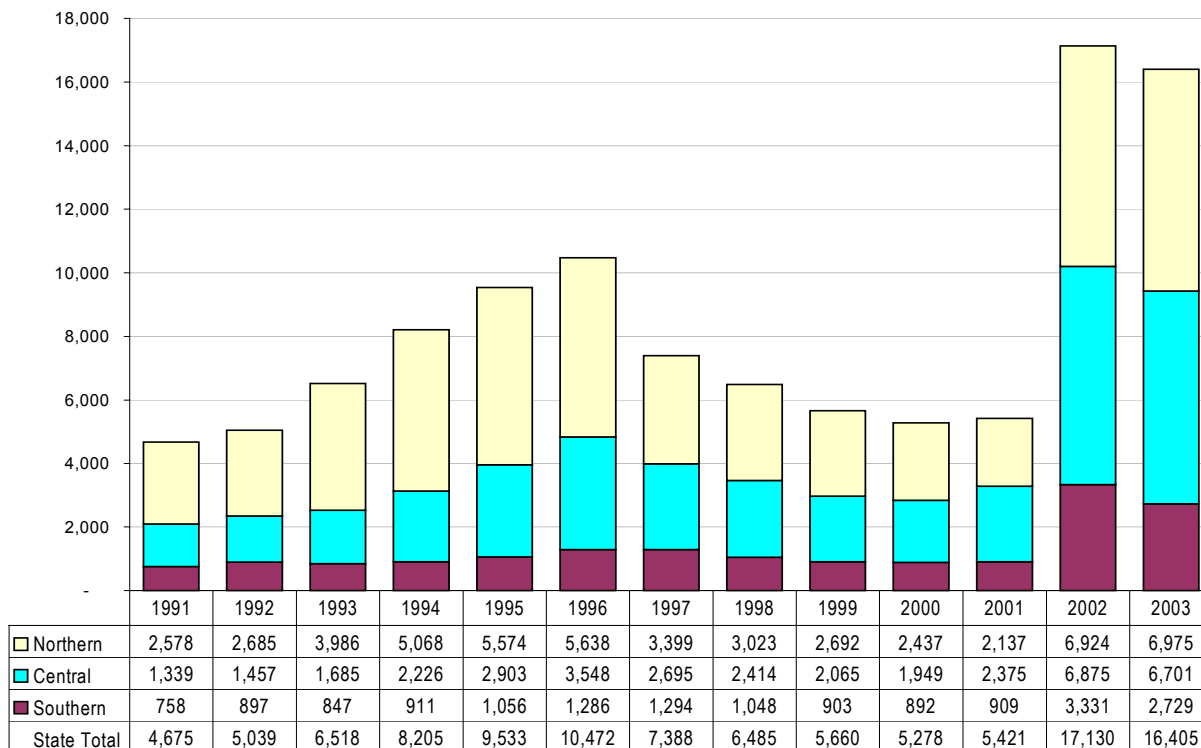
Vocational rehabilitation decisions declined from 1996 to 2000, increasing slightly in 2001.

There were 8,930 more cases referred to the DWC Vocational Rehabilitation Unit in 2002 than in 2001, an increase of approximately 28 percent. The increase in cases is directly reflected in the increase in disputes received by the Unit in 2002. There were actually 10,562 more disputes filed in 2002 than in 2001.

In 2001, the Unit held 5,421 conferences, whereas in 2002, 17,130 conferences were held, an increase of more than 200 percent. It should be noted that this is the first year where the Unit held more conferences to issue determinations on the record (17,130 as compared to 16,973).

The Rehabilitation Unit held 16,405 conferences as a result of disputes filed in 2003, a slight decrease from the previous year.

Vocational Rehabilitation Decisions and Orders After Conference



Source: DWC

Division of Workers' Compensation Audits

Assembly Bill (AB) 749, enacted into law in 2002 and effective January 1, 2003, resulted in major changes to California workers' compensation law and mandates significant changes to the DWC audit program beginning 2003.²¹

Below is a description of the changes in the DWC audit program beginning in 2003:

- The Audit Unit will be required to conduct a profile audit review (PAR) of each adjusting location of California workers' compensation claims at least once every five years.
- The Administrative Director (AD) will annually publish a PAR performance standard and a full compliance audit (FCA) performance standard.
- Audit subjects that meet or exceed PAR performance standards will be required to pay all compensation found unpaid by the Audit Unit, but no penalties will be assessed.
- Audit subjects that do not meet or exceed PAR performance standards will be subject to an FCA.
- Audit subjects that meet or exceed FCA performance standards will be required to pay all compensation found unpaid by the Audit Unit and will be assessed penalties for unpaid and late paid compensation only.
- Audit subjects that do not meet or exceed FCA performance standards will be required to pay any compensation found unpaid by the Audit Unit and will be assessed penalties for all violations included in an FCA failure penalty schedule.
- A new factor in determining penalty amounts (for audit subjects that fail to meet or exceed the FCA performance standard) will be the size of the adjusting location. Penalties assessed pursuant to the FCA failure penalty schedule may be as high as \$40,000 each for the most serious violations at the largest adjusting locations. The previous maximum penalty amount was \$5,000.
- The AD shall publish and make available to the public on request a list ranking all insurers, self-insured employers, and third-party administrators (TPAs) audited according to their performance ratings.

Calculation of Profile Audit Review Performance Ratings

In order to determine whether audit subjects meet or exceed the PAR performance standard, each audit subject's PAR performance rating will be calculated following a review of a sample of randomly selected indemnity claims. The audit subject's PAR performance rating is a composite score based on performance in specific key areas. Ratings will be based on the frequency and severity of violations, with a weighting factor emphasizing the gravity of violations involving the failure to pay compensation. The higher the rating of an audit subject, the worse the performance. The formula for the calculation of each year's performance standard is in 8CCR Section 10107(c)(3).

²¹ Since major changes were made to the audit program effective January 2003, the continuity of tracking data as presented in previous years is no longer possible.

WORKERS' COMPENSATION SYSTEM PERFORMANCE

Ratings will be calculated based on:

- The frequency of claims with unpaid compensation and the amounts of unpaid compensation found in the sample of randomly selected undisputed claims.
- The frequency of claims with violations involving late first temporary disability (TD) payments or first notices of salary continuation.
- The frequency of claims with violations involving late first payments of permanent disability (PD), vocational rehabilitation maintenance allowance, and death benefits.
- The frequency of claims with violations involving late subsequent (scheduled) indemnity payments.
- The frequency of claims with violations involving the failure to timely issue Notices of Potential Eligibility for Vocational Rehabilitation and Notices advising injured workers of their rights for Qualified Medical Examinations to determine PD.

If the audit subject's PAR performance rating meets or exceeds (i.e., is lower than) the worst 20 percent of performance ratings for all final audit reports issued over the three calendar years before the year preceding the current audit, the Audit Unit will issue Notices of Compensation Due pursuant to Section 10110 but will assess no administrative penalties for violations found in the PAR.

If the audit subject's PAR performance rating is higher than the worst 20 percent of performance ratings as calculated based on all final audit findings as published in the Annual DWC Audit Reports over the three calendar years before the year preceding the current audit, the Audit Unit will conduct an FCA by randomly selecting and auditing an additional sample of indemnity claims.

It is estimated that approximately 80 percent of audit subjects meet or exceed the PAR performance standard and that approximately 20 of the audit subjects will be subject to an FCA.

2003 Audit Results

The Audit Unit of the DWC completed a total of 70 audits, which began in 2003. Of these, 64 were routinely selected PAR audits, and the remaining 6 were target PAR audits. Target audits for 2003 were selected based upon results from prior audits of calendar-year 2000. The total number of audit subjects included 20 insurance companies, 24 self-administered, self-insured employers, and 26 TPAs.

At all audits, claim files were selected for audit on a random basis, with the number of indemnity and denied cases being selected based on the numbers of claims in each of those populations for the audit subject. No medical-only claims were selected for audit in 2003. In addition, if any complaints were received regarding possible violations of the Labor Code or regulations of the AD, each respective claim file related to a complaint may have been part of the audit pursuant to Title 8 CCR 10107.1(c)(2), (d)(2), and (e)(2).

The numbers of claims audited are based upon the total number of claims at the adjusting location and the number of complaints received by the DWC related to claims handling practices. Pursuant to Title 8, CCR, Section 10107.1(c) and (d), either a PAR sample of up to 59 or an FCA sample of up to 138 of indemnity claims is audited, depending on the claims administrator's performance as measured in certain key areas after the PAR sample is audited.

WORKERS' COMPENSATION SYSTEM PERFORMANCE

Pursuant to Title 8, CCR, Section 10107.1(e), a sample up to 67 denied claims may be audited, depending on the claims administrator's performance as measured in certain key areas after the review of the indemnity claims in the FCA stage 1 sample is audited.

In 2003, compliance officers audited 3,425 claim files, of which 3,372 were randomly selected claims in which some form of indemnity benefits were paid. One audit included randomly selected claims in which the employer or insurer denied all liability. Targeted claims audited included 46 based on complaints received by the DWC. Four claims were designated as additional files. Additional files include:

- Claims chosen based on criteria relevant to a target audit but for which no specific complaints had been received.
- Claims audited in excess of the number of claims in the random sample that were audited because the files selected were incorrectly designated on the log.

Violations of the Administrative Director's Regulations

As a result of audits conducted during the calendar-year 2003, the Audit Unit issued 3,903 administrative penalties assessable to claims administrators totaling \$706,480. However, the Audit Unit waived \$624,835 of the assessable penalties pursuant to Labor Code Section 129.5(c). The total penalties assessed claim administrators were \$81,645. These waivers occurred within 65 of the audits that met or exceeded the PAR performance standard and 4 other audits that met or exceeded the FCA performance standard.

In addition to the penalty assessments totaling \$81,645 that were assessed as a result of audits, an additional 32 penalties totaling \$20,900 were assessed, not as the result of individual audits, but for the failure of claims administrators either to timely file or having filed an inaccurate Annual Report of Inventory of Claims with the Audit Unit, as required by Title 8, CCR, Sections 10104.

Unpaid Compensation Due To Employees

There were 490 claims in which injured workers were owed unpaid compensation totaling \$370,454.80, an average of \$756.03 per file in which there was unpaid compensation. The unpaid compensation is broken down as follows: \$137,524.72 in TD indemnity and salary continuation in lieu of TD (37.1 percent of the unpaid compensation), \$142,126.28 in PD indemnity (38.4 percent of the unpaid compensation), \$22,383.25 in vocational rehabilitation maintenance allowance (6.0 percent of the unpaid compensation), \$65,220.45 in 10 percent self-imposed increases for late indemnity payments (17.6 percent of the unpaid compensation), \$57.67 in death benefits (0.1 percent of the unpaid compensation), and \$3,142.43 in interest and penalty and/or unreimbursed medical expenses (0.8 percent of the unpaid compensation).

The administrator is required to pay these employees within 15 days after receipt of a notice advising the administrator of the amount due, unless a written request for a conference is filed within seven days of receipt of the audit report.

When employees due unpaid compensation cannot be located, the unpaid compensation is payable by the administrator to the Workers' Compensation Administrative Revolving Fund (WCARF). In these instances, application by an employee can be made to the DWC for payment of monies deposited by administrators into this fund. In 2003, \$1,603.76 was paid into this fund because the injured workers could not be located.

WORKERS' COMPENSATION SYSTEM PERFORMANCE

Frequency of Violations

A statewide frequency of the five key areas under review for violations used in determining the PAR and FCA performance standards was calculated after combining the individual audit findings. The frequency noted in each area is actually the ratio of files in which there is an assessment for a specific type of violation to the total number of randomly selected files in which the possibility of that type of violation exists.

Unpaid Indemnity

Of the randomly selected audited claims in which indemnity was accrued and payable, the percentage for assessable penalties for unpaid indemnity is:

- 2003 65 Audits passing the PAR standard: 13.24%
- 2003 4 Audits passing the FCA standard: 23.08%
- 2003 1 Audit failing all standards: 75.00%

Late First Payment of Temporary Disability or First Salary Continuation Notice When Salary Continuation is Paid in Lieu of Temporary Disability

Of the randomly selected audited claims with TD payments or first notice of salary continuation, the following percentage for assessable penalties for late paid first payment of TD or late first notice of salary continuation is:

- 2003 65 Audits passing the PAR standard: 24.57%
- 2003 4 Audits passing the FCA standard: 35.99%
- 2003 1 Audit failing all standards: 75.00%

Late First Payment of Permanent Disability, Vocational Rehabilitation Maintenance Allowance, and Death Benefits

Of the randomly selected audited claims with PD, vocational rehabilitation maintenance allowance, and death benefits payments, the following percentage for assessable penalties for late paid first payment of PD, vocational rehabilitation maintenance allowance, and death benefits is:

- 2003 65 Audits passing the PAR standard: 14.03%
- 2003 4 Audits passing the FCA standard: 29.87%
- 2003 1 Audit failing all standards: 0.00%

Late Subsequent Indemnity Payments

Of the randomly selected audited claims with subsequent indemnity payments, the following percentage for assessable penalties for late subsequent indemnity payments is:

- 2003 65 Audits passing the PAR standard: 25.37%
- 2003 4 Audits passing the FCA standard: 39.17%
- 2003 1 Audit failing all standards: 100.00%

WORKERS' COMPENSATION SYSTEM PERFORMANCE

Failure or Late Provision of Agreed Medical Evaluator/Qualified Medical Evaluator Notices and Notices of Potential Eligibility for Vocational Rehabilitation

Of the randomly selected audited claims with requirement to issue the agreed medical evaluator/qualified medical evaluator (AME/QME) notice and/or the notice of potential eligibility for vocational rehabilitation, the following percentage for assessable penalties for failure or late issuance is:

- 2003 65 Audits passing the PAR standard: 27.78%
- 2003 4 Audits passing the FCA standard: 39.87%
- 2003 1 Audit failing all standards: 20.00%

Performance Ratings of Audit Subjects

Of the 70 audits conducted in 2003:

- Sixty-five audit subjects (92.9 percent) met or exceeded the PAR 2003 performance standard, thereby having all penalty citations waived in accordance with Labor Code Section 129.5(c) and Title 8 CCR Section 10107.1(c)(3)(B). These audit subjects were ordered to pay all unpaid compensation due found within the audit.
- Five audit subjects failed to meet or exceed the PAR standard with the audit expanding into the FCA pursuant to Labor Code Section 129.5c and Title 8 CCR Section 10107.1(d). Four of these audit subjects (5.7 percent) then met or exceeded the FCA stage1 2003 standard, thereby having all penalty citations except those for unpaid indemnity and late paid indemnity in accordance with Labor Code Section 129.5(c) and Title 8 CCR Section 10107.1(d)(3)(B). Additionally, these audit subjects were ordered to pay all unpaid compensation due found within the audit.
- One of the five audit subjects (1.4 percent) that failed the PAR also failed the FCA stage 2 performance standard thereby demonstrating poor performance, and this administrator will be subject to a return target audit within two years. This audit expanded into the FCA pursuant to Labor Code Section 129.5c and Title 8 CCR Section 10107.1(e), and the audit subject was assessed all penalty citations in accordance with Labor Code Section 129.5(c) and Title 8 CCR Section 10107.1(e).

The **DWC Administrative Director's 2003 Audit Results Ranking Report** is part of the DWC Audit Annual Report, and the complete list of the performance standard scores for the 70 audit subjects can be reviewed in order, from the best to worst performer.

Profile Audit Review and Full Compliance Audit Standards Comparison

A look at the PAR and FCA performance standards combining all individual audit findings within the group that met or exceeded the PAR standard with the group that failed the PAR, but met or exceeded the FCA standard and the group that failed both standards (Individual Exhibits 860 1A, 1B, and 1C) beginning with calendar-year 2003 shows:

PAR Standard

- 2003 Average score of the 65 audit subjects: 1.01343
- 2003 Average score of the 5 audit subjects failing PAR: 2.60301
- 2003 Average score of the 1 audit subject failing PAR and FCA: 6.96841

WORKERS' COMPENSATION SYSTEM PERFORMANCE

FCA (stage 1) Standard

- 2003 Average score of the 4 audit subjects passing FCA: 1.97533
- 2003 Average score of the 1 audit subject failing FCA: 6.96841

FCA (stage 2) Standard

- 2003 Average score of the 1 audit subject failing FCA: 5.16178

Appeals of Audits

In 2002, one audit was appealed and was resolved in 2003.

In 2002, the 99 Cents Only Stores in City of Commerce appealed Audit No. AHM-16-02-R-2: The audit subject appealed all 1,865 penalties totaling \$289,015. A complete review and discussion of the penalty items of concern to the audit subject were held in 2003. The audit subject withdrew its appeal of all penalties and paid the full amount shown above.

In 2003, there were no appeals of audit findings.

Civil Penalties

Civil Penalty Under Pre-2003 Labor Code Section 129.5(d)

The California Labor Code Section 129.5(d), effective from 1990 through 2002, states, in part:

"In addition to the penalty assessments permitted by subdivision (a), the administrative director may assess a civil penalty, not to exceed one hundred thousand dollars (\$100,000), upon finding, after hearing, that an employer, insurer, or third-party administrator for an employer has knowingly committed and has performed with a frequency as to indicate a general business practice any of the following:

- (1) Induced employees to accept less than compensation due, or made it necessary for employees to resort to proceedings against the employer to secure compensation due.
- (2) Refused to comply with known and legally indisputable compensation obligations.
- (3) Discharged or administered compensation obligations in a dishonest manner.
- (4) Discharged or administered compensation obligations in a manner as to cause injury the public or those dealing with the employer or insurer...."

As a result of investigations and audits conducted by the Civil Penalty Investigation Section of the Audit Unit under Labor Code Section 129.5(d), the AD assessed five separate civil penalties between calendar-years 2000 and 2003. The claim administrators were National RV, Inc., Crawford & Company, Cambridge Integrated Services, Inc., City of Los Angeles, and 99 Cents Only Stores, Inc.

Civil Penalty Under 2003 Labor Code Section 129.5(e)

WORKERS' COMPENSATION SYSTEM PERFORMANCE

Under AB 749, effective January 1, 2003, California Labor Code Section 129.5(e) was modified and states, in part:

"In addition to the penalty assessments permitted by subdivision (a), the administrative director may assess a civil penalty, not to exceed one hundred thousand dollars (\$100,000), upon finding, after hearing, that an employer, insurer, or third-party administrator for an employer has knowingly committed or has performed with sufficient frequency so as to indicate a general business practice any of the following:

- (1) Induced employees to accept less than compensation due, or made it necessary for employees to resort to proceedings against the employer to secure compensation due.
- (2) Refused to comply with known and legally indisputable compensation obligations.
- (3) Discharged or administered compensation obligations in a dishonest manner.
- (4) Discharged or administered compensation obligations in a manner as to cause injury the public or those dealing with the employer or insurer...."

Any employer, insurer, or TPA that fails to meet the FCA performance standards in two consecutive FCAs shall be rebuttably presumed to have engaged in a general business practice of discharging and administering its compensation obligations in a manner causing injury to those dealing with it.

No civil penalty investigations and target audits occurred in 2003. However, in 2003, the Audit Unit conducted six Return Target Audits. These were due to audit findings in 2000, wherein the audit subjects failed to meet the criteria as set forth in Title 8 CCR Section 10106(f) which resulted in a return non-random audit within three years. All six audit subjects met or exceeded the PAR or FCA performance standard set for 2003, and no further action is required due to the past failure.

Regulatory Activity


The Audit Unit has drafted regulations for SB 228 and SB 899 and made modifications to regulations previously promulgated on AB 749.


Staffing Problems/Backlogs

Due to the budget crisis, AB 749 staff augmentation necessary to complete mandates never materialized, and the Audit Unit had deficiencies in meeting all mandates of AB 749. From July through September of 2004, the Audit Unit expected to hire staff per augmentations of AB 749 and SB 228 and by the end of the year, the additional staff as required for SB 899.

The Audit Unit expects to be able to complete all mandates beginning within fiscal year 2005/2006.

For further information...

 DWC Report: "2001 Audits – A Report to the California Legislature on Claims Handling Practices of Workers' Compensation Administrators" (2002)

 CHSWC Report on the Division of Workers' Compensation Audit Function (1998) - available at www.dir.ca.gov/chswc

WORKERS' COMPENSATION SYSTEM PERFORMANCE

Disability Evaluation Unit

The DWC Disability Evaluation Unit (DEU) reported the following production numbers for the 2003 calendar year.

Disability Evaluations (Ratings)

Unrepresented summaries	
(QME evaluations)	14,753
Treating doctor reports	29,198
Walk-in consults	34,369
Mail-in consults	57,367
Formal ratings	2,386
<i>Total written ratings</i>	<i>138,073</i>
Oral ratings	18,856
<i>Total ratings</i>	<u><i>156,929</i></u>

Other production:

Cross-examinations	275
Commutations	1,948
Unratable medical reports	4,493

Information and Assistance Unit

In the 2003 calendar year, the DWC Information and Assistance (I&A) Unit:

- Handled 432,495 calls from the public.
- Reviewed 13,788 settlements.
- Conducted 30,495 face-to-face meetings with injured workers at the counter.
- Made 122 public presentations.

Division of Workers' Compensation Staffing

DWC will be receiving 236 new positions in the Budget for fiscal year 2004/2005, currently being considered by the legislature, which includes 220 positions to fully staff the courts. In addition, this budget provides for a late submittal (by August 1, 2004) of a legislative budget change proposal (BCP) to implement SB 899.

Adjudication Simplification Efforts

Division of Workers' Compensation Information System

The California Workers' Compensation Information System (WCIS) is intended to be an information source to help the administrative director (AD) and other State policy makers carry out their decision-making responsibilities and to provide accurate and reliable statistical data and analyses to other stakeholders in the industry. The specific legislative mandate for California's WCIS is that it should provide information in a cost-effective manner for:

- Managing the workers' compensation system.
- Evaluating the benefit-delivery system.
- Assessing the adequacy of indemnity payments.
- Providing data for research.

California's WCIS uses electronic (computer-to-computer) data interchange (EDI), to collect comprehensive information from claims administrators. In March 2000, the WCIS began collecting employers' first report of injury (FROI) and, later that year, started collecting subsequent reports of injury (SROI), or injured worker benefits data. As of mid-year 2004, DWC reports that almost 3.4 million FROI claims were posted to the WCIS database, of which about 475,000 had aggregated indemnity information and other injury-related costs from SROI reporting.

WCIS is capturing at least limited data on about 80 percent of the approximately one million compensable claims occurring in the State each year from over 200 trading partners. Basic information collected on the FROI by the WCIS includes data pertaining to characteristics of the employer, worker, and injury associated with the workers' compensation claim. SROI data, meanwhile, provide information about TD and other indemnity payments to the injured worker, as well as aggregated medical costs and claim-handling expenses related to providing services to the injured worker.

Currently, DWC is planning to begin collecting detailed medical billing/transactions data for the WCIS. Development of the WCIS to include detailed medical transaction data is a very cost-effective State investment in the workers' compensation area. In fact, the AD of the DWC will have the necessary information and data to be able to administer in a cost-effective manner the California workers' compensation system only when the WCIS has been developed to include medical transaction data.

Medical benefits comprise more than one-half of all workers' compensation benefits in California, so the Department of Industrial Relations (DIR) cannot consider WCIS to be complete until it includes a detailed medical data collection component. In general, the medical data to be collected under WCIS would enable DIR to characterize the cost of workers' compensation medical care, the treatments provided, the types and number of physicians providing care, and billing and payment practices. It would also allow researchers to study and estimate relationships among these medical treatment and payment patterns, as well as the interrelationships between the medical data and other factors, such as claimant indemnity support or background claimant demographic and employer industrial characteristics.

For example, integrating medical data with FROI/SROI data would enable DIR to link information about aspects of medical care with the timing and magnitude of indemnity benefit

WORKERS' COMPENSATION SYSTEM PERFORMANCE

payments. Thus, key public policy issues such as the adequacy of medical and income maintenance benefits can be studied, along with questions concerning medical and benefits utilization. Data also could be used in efforts to detect fraud in the system and for developing a variety of mandated fee schedules and medical studies in workers' compensation.

CHSWC has been made aware of stakeholder concerns regarding the design and implementation of WCIS. CHSWC will continue to monitor and report on its progress.

Carve-outs - Alternative Workers' Compensation Systems

A provision of the workers' compensation reform legislation in 1993, implemented through Labor Code Section 3201.5, allowed construction contractors and unions, via the collective bargaining process, to establish alternative workers' compensation programs, also known as carve-outs.

CHSWC is monitoring the carve-out program, which is administered by the DWC.

As shown in the following table, participation in the carve-out program has grown, with significant increases in the number of employees, work hours and amount of payroll.

Carve Out Participation	1995	1996	1997	1998	1999	2000*	2001*	2002
Employers	242	277	550	683	442	260	143	512
Work Hours (millions)	6.9 million	11.6 million	10.4 million	18.5 million	24.8 million	16.9 million	7.9 million	29.4 million
Employees (full-time equivalent)	3,450	5,822	5,186	9,250	12,395	8,448	3,949	14,261
Payroll (millions \$)	\$157.6 million	\$272.4 million	\$242.6 million	\$414.5 million	\$585.1 million	\$442.6 million	\$201.9 million	\$634.2 million

* Please note that data is incomplete

Source: DWC

A listing of employers and unions in carve-out agreements follows.

CHSWC engaged in a study to identify the various methods of alternative dispute resolution that are being employed in California carve-outs and to begin the process of assessing their efficiency, effectiveness and compliance with legal requirements.

Since carve-out programs have operated only since the mid-1990's, the data collected are very preliminary and not statistically significant. The study team found indications that neither the most optimistic predictions about the effects of carve-outs on increased safety, lower dispute rates, far lower dispute costs, and significantly more rapid return to work, nor the most pessimistic predictions about the effect of carve-outs on reduced benefits and access to representation have occurred.

WORKERS' COMPENSATION SYSTEM PERFORMANCE

Impact of Senate Bill 228

SB 228 adds Labor Code Section 3201.7, which establishes a new carve-out program in any unionized industry, in addition to the existing carve-out in the construction industry (already covered in current law by Labor Code Section 3201.5).

Only the union may initiate the carve-out process by petitioning the AD. The AD will review the petition according to the statutory requirements and issue a letter allowing each employer and labor representative a one-year window for negotiations. The parties may jointly request a one-year extension to negotiate the labor-management agreement.

In order to be considered, the carve-out must meet several requirements including:

- The union has petitioned the AD as the first step in the process.
- A labor-management agreement has been negotiated separate and apart from any collective bargaining agreement covering affected employees.
- The labor-management agreement has been negotiated in accordance with the authorization of the AD between an employer or groups of employers and a union that is the recognized or certified exclusive bargaining representative that establishes any of the following:
 - An alternative dispute resolution system governing disputes between employees and employers or their insurers that supplements or replaces all or part of those dispute resolution processes contained in this division, including, but not limited to, mediation and arbitration. Any system of arbitration shall provide that the decision of the arbiter or board of arbitration is subject to review by the appeals board in the same manner as provided for reconsideration of a final order, decision, or award made and filed by a workers' compensation administrative law judge.
 - The use of an agreed list of providers of medical treatment that may be the exclusive source of all medical treatment provided under this division.
 - The use of an agreed, limited list of qualified medical evaluators (QMEs) and agreed medical evaluators (AMEs) that may be the exclusive source of QMEs and AMEs under this division.
 - A joint labor-management safety committee.
 - A light-duty, modified job or return-to-work program.
 - A vocational rehabilitation or retraining program utilizing an agreed list of providers of rehabilitation services that may be the exclusive source of providers of rehabilitation services under this division.
- The minimum annual employer premium for the carve-out program for employers with 50 employees or more equals \$50,000, and the minimum group premium equals \$500,000.
- Any agreement must include right of counsel throughout the alternative dispute resolution process.

WORKERS' COMPENSATION SYSTEM PERFORMANCE

Impact of Senate Bill 899

Construction industry carve-outs were amended per Labor Code Section 3201.5 and carve-outs in other industries were amended per Labor Code Section 3201.7 to permit the parties to negotiate any aspect of the delivery of medical benefits and the delivery of disability compensation to employees of the employer or group of employers who are eligible for group health benefits and non-occupational disability benefits through their employer.

For further information...



The latest information on carve-outs may be obtained at www.dir.ca.gov. Select "workers' compensation" then "Division of Workers' Compensation," then "Construction Industry Carve-Out Programs" (under "DWC/WCAB Organization and Offices").



CHSWC Report: "Carve-Outs' in Workers' Compensation: An Analysis of Experience in the California Construction Industry" (1999). Available at www.dir.ca.gov/CHSWC/chswc.html.



Carve-outs: A guidebook for Unions and Employers in Workers' Compensation." CHSWC (2004). Available at www.dir.ca.gov/CHSWC/chswc.html.

Carve-out Participants as of June 8, 2004

The following charts show the current status of carve-out agreements pursuant to Labor Code Sections 3201.5 and 3201.7, as reported by the DWC.

Non-construction Industry Carve-out Participants as of June 8, 2004 Labor Code Section 3201.7

No.	Union	Company	Petition Received	Permission to negotiate date/exp	Application for Agreement Acceptance	Agreement Acceptance Letter date
1.	United Food & Commercial Workers Union Local 324	Super A Foods-2 locations 76 employees	5/5/04			
2.	United Food & Commercial Workers Union Local 1167	Super A Foods – Meat Department 8 employees	5/24/04			

Source: DWC

WORKERS' COMPENSATION SYSTEM PERFORMANCE

Construction Industry Carve-out Participants as of June 8, 2004 Labor Code Section 3201.5

1 = 1 employer, 1 union; 2 = 1 union, multi employer; 3 = project labor agreement

No.	Union	Company	Exp. Date
1. (3)	California Building & Construction Trades Council	Metropolitan Water District. So. Ca-Diamond Valley Lake	11/07/06
2. (2)	International Brotherhood of Electrical Workers IBEW	NECA--National Electrical Contractors Assoc.	8/14/04
3. (2)	Southern California District of Carpenters & 19 local unions	6 multi-employer groups--1000 contractors.	8/14/04
4. (2)	Southern California Pipe Trades Council 16	Multi employer--Plumbing & Piping Industry Council	8/24/04
5. (1)	Steamfitters Local 250	Cherne--two projects completed in 1996	Complete
6. (1)	International Union of Petroleum & Industrial Workers	TIMEC Co., Inc./TIMEC So. CA., Inc.	6/30/03
7. (3)	Contra Costa Building & Construction Trades Council	Contra Costa Water District - Los Vaqueros	Complete
8. (2)	Southern California District Council of Laborers	Associated General Contractors of California, Building Industry Association of Southern California, Southern California Association, Engineering Contractors' Association	7/31/05
9. (3)	California Building & Construction Trades Council	Metropolitan Water District of Southern California Inland Feeder-Parsons	Ended 12/31/02
10. (3)	Bldg. & Construction Trades Council of Alameda County	Parsons Constructors, Inc. National Ignition Facility--Lawrence Livermore	9/23/06
11. (2)	District Council of Painters	Los Angeles Painting & Decorating Contractors National Association	10/29/06
12. (1)	Plumbing & Pipefitting Local 342	Cherne Contracting - Chevron Base Oil 2000 project	Complete
13. (3)	Los Angeles County Building & Construction Trades Council AFL-CIO	Cherne Contracting --ARCO	Complete
14. (2)	Operating Engineers Loc. 12	Southern California Contractors' Association	4/1/05
15. (2)	Sheet Metal International Union	Sheet Metal-A/C Contractors National Association	4/1/05
16. (3)	Building & Construction Trades Council San Diego	San Diego County Water Authority Emergency Storage Project	2/2006
17. (3)	Los Angeles County Building & Construction Trades Council	Cherne Contracting -- Equilon Refinery -- Wilmington	3/1/07
18. (3)	Plumbers & Steamfitters	Cherne Contracting -- Chevron Refinery -- Richmond	7/1/05
19. (3)	Plumbers & Steamfitters	Cherne Contracting -- Tesoro Refinery -- Martinez	7/1/05
20. (3)	Los Angeles/Orange Counties Bldg. & Construction Trade Council	Cherne Contracting -- Chevron Refinery -- El Segundo	7/26/05
21. (2)	District Council of Iron Workers - State of California and Vicinity	California Ironworker Employers Council	2/25/06
22. (2)	Sheet Metal Worker International Association #105	Sheet Metal & A/C Labor Management Safety Oversight Committee (LMSOC)	4/17/06
23. (2)	United Union of Roofers, Waterproofers and Allied workers, Local 36 and 220	Southern California Union Roofing Contractors Association	4/7/06
24. (2)	United Union of Roofers, Waterproofers and Allied Workers, Locals 40, 81 & 95	Associated Roofing Contractors of the Bay Area Counties	7/31/04
25. (2)	United Association of Journeyman & Apprentices--Plumbers & Pipefitters, Local #447	No. CA Mechanical Contractors Association & Association Plumbing & Mechanical Contractors of Sacramento, Inc.	11/7/06
26. (2)	Operatives Plasterers and Cement Masons International Association, Local 500 & 600	So. California Contractors Association, Inc.	4/1/05
27. (1)	International Unions of Public & Industrial Workers	Irwin Industries, Inc.	3/23/07
28. (2)	PIPE Trades District Council No. 36	Mechanical Contractors Council of Central CA	4/14/07

WORKERS' COMPENSATION SYSTEM PERFORMANCE

Costs

Workers' Compensation Premium

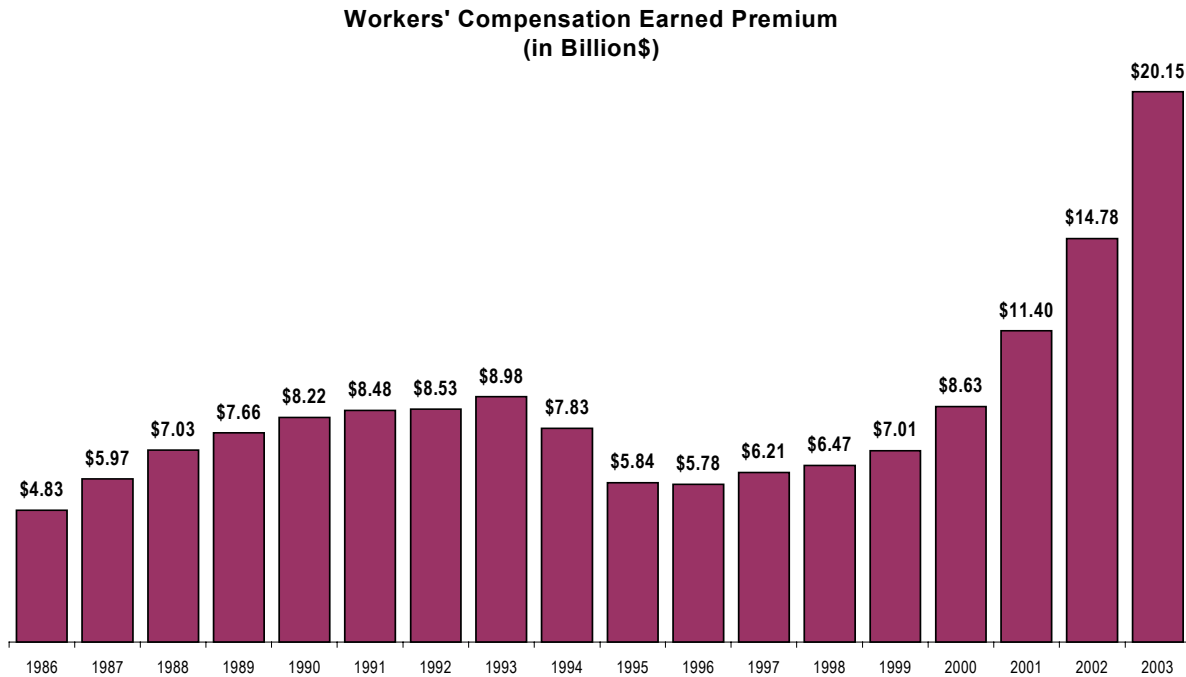
The total amount of earned workers' compensation premium decreased during the first half of the 1990's, increased slightly in the latter part of the decade, then increased sharply in 2000 and 2001.

This increase in total premium appears to reflect:

- Movement from self-insurance to insurance.
- An increase in economic growth.
- Wage growth.
- Long-term movement from a manufacturing to a service economy.
- Increase in premium rates. Premiums in 2001 and 2002 were up sharply due primarily to rate increases in the market. The Workers' Compensation Insurance Rating Bureau (WCIRB) reports that the average rate on 2001 policies was about 34 percent higher than on 2000 policies and that the average rate on 2003 policies was 36 percent higher than on 2002 policies.

Workers' Compensation Earned Premium

WCIRB defines earned premium as the portion of a premium that has been earned by the insurer for policy coverage already provided. For example, one-half of the total premium will typically be earned six months into an annual policy term.



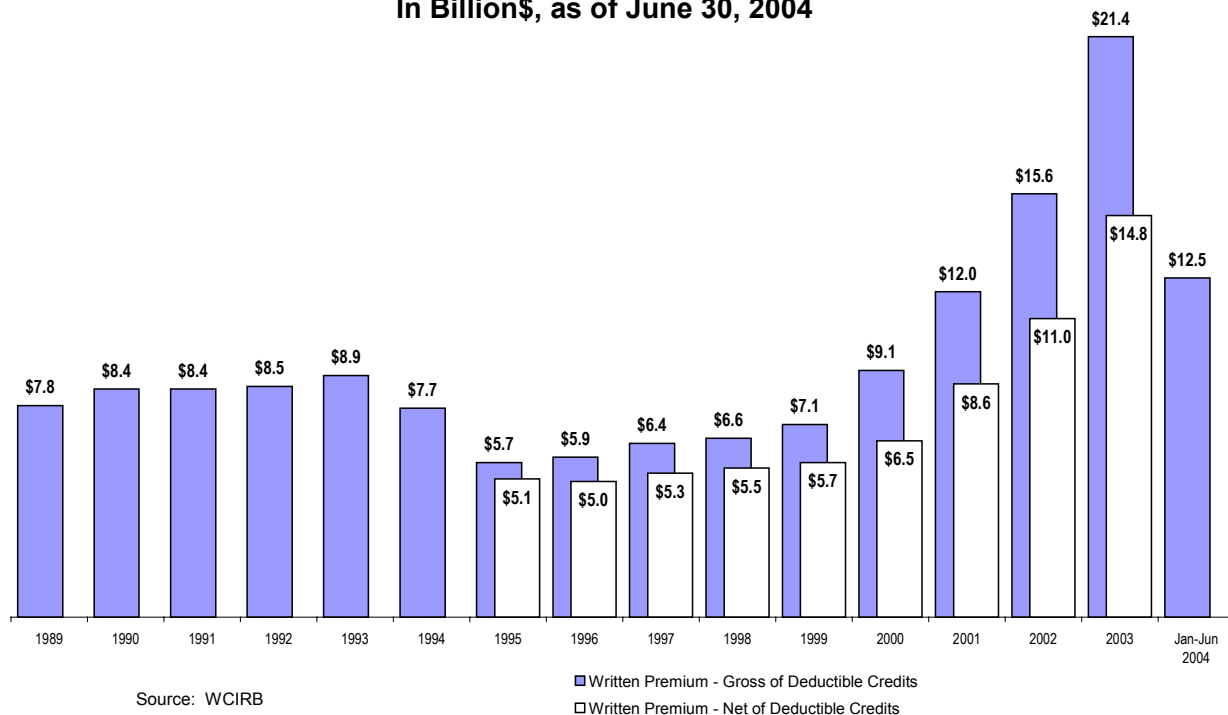
Source: WCIRB

WORKERS' COMPENSATION SYSTEM PERFORMANCE

Workers' Compensation Written Premium

WCIRB defines written premium as the premium an insurer expects to earn over the policy period. Workers' compensation premium decreased from 1993 to 1995, increased in the latter part of the decade, then increased sharply through 2003. The written premium for the first quarter of 2004, \$6.4 billion, is approximately 25 percent above the written premium reported for the first quarter of 2003. This increase in written premium is primarily the result of rate increases over the past several years.

**California Workers' Compensation Written Premium
In Billion\$, as of June 30, 2004**



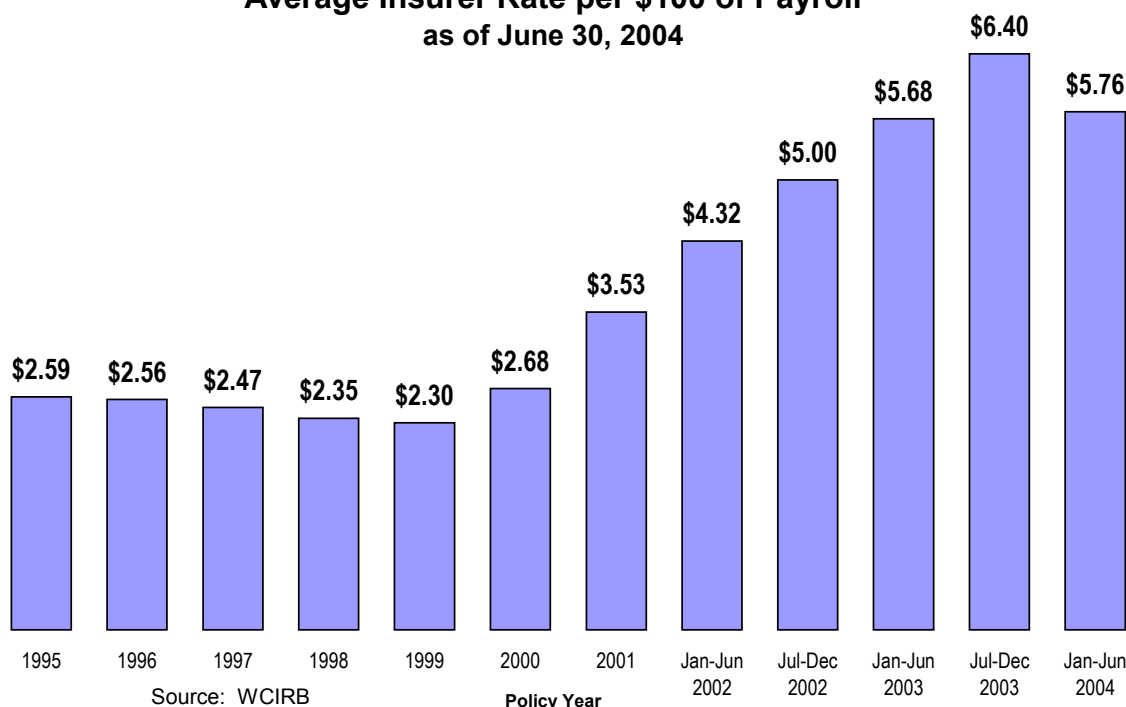
Average California Workers' Compensation Premium Rate Per \$100 of Payroll

The following chart shows the average workers' compensation premium rate per \$100 of payroll. The average dropped during the early- to mid-1990's, stabilized during the mid- to late-1990's, and then rose significantly beginning in 2000.

However, the average statewide insurer rate per \$100 of payroll for policies written in the first quarter of 2004 was 8 percent below the average rate charged for the second six months of 2003. According to WCIRB, this rate was also 17 percent below the average rates that would have been charged in the first quarter of 2004 if average statewide rates had increased by the 12 percent increase in the advisory pure premium rates proposed by WCIRB prior to the enactment of AB 227, SB 228, and SB 899.

WORKERS' COMPENSATION SYSTEM PERFORMANCE

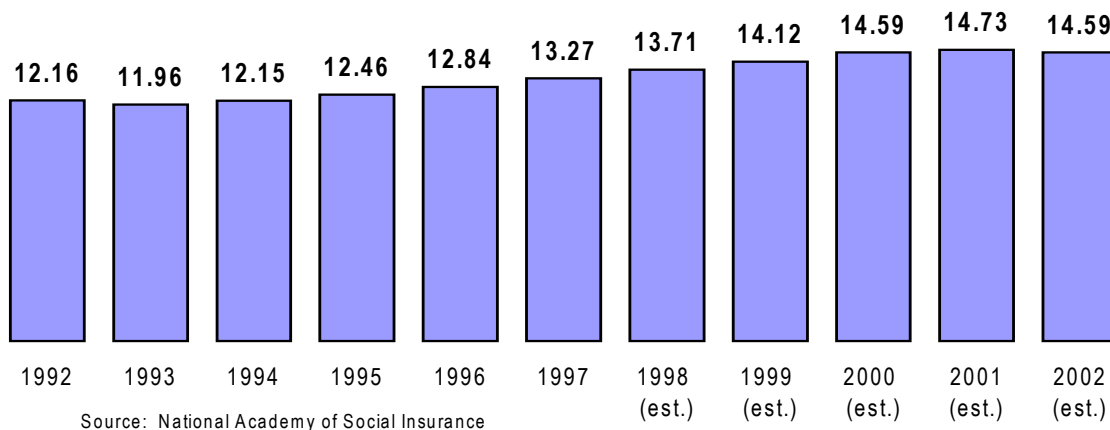
California Workers' Compensation Average Insurer Rate per \$100 of Payroll as of June 30, 2004



Workers Covered by Workers' Compensation Insurance

Although the total earned premium increased from 1995, the number of workers covered by workers' compensation insurance also increased.

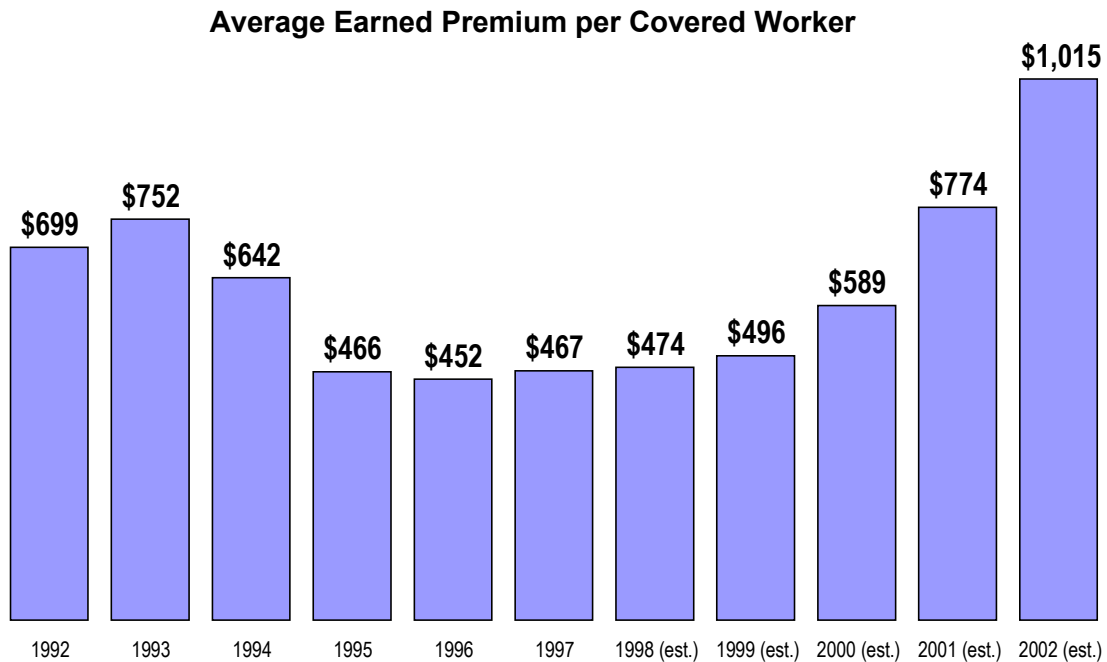
Workers Covered by Workers' Compensation Insurance (Millions)



WORKERS' COMPENSATION SYSTEM PERFORMANCE

Average Earned Premium per Covered Worker

As shown in the graph below, the average earned premium per covered worker dropped during the early- to mid-1990's, leveled off for a few years and then started to rise in 2000.



Data Sources: WCIRB and NASI
Calculations: CHSWC

Workers' Compensation Expenditures – Insured Employers

Indemnity Benefits

WCIRB provided the cost of indemnity benefits paid by insured employers. Assuming that insured employers comprise approximately 80 percent of all employers, estimated indemnity benefits are shown on the following chart for the total system and for self-insured employers as well.

WORKERS' COMPENSATION SYSTEM PERFORMANCE

System-wide Estimated Costs of Paid Indemnity Benefits

Indemnity Benefit (Thousand\$)	2002	2003	Change
Temporary Disability	\$2,171,419	\$2,498,083	\$326,664
Permanent Total Disability	\$75,608	\$89,138	\$13,530
Permanent Partial Disability	\$2,037,250	\$2,367,731	\$330,481
Death	\$58,073	\$58,376	\$304
Funeral Expenses	\$2,125	\$1,750	-\$375
Life Pensions	\$40,394	\$41,535	\$1,141
Vocational Rehabilitation	\$618,155	\$732,485	\$114,330
Total	\$5,003,023	\$5,789,098	\$786,075

Paid by Insured Employers

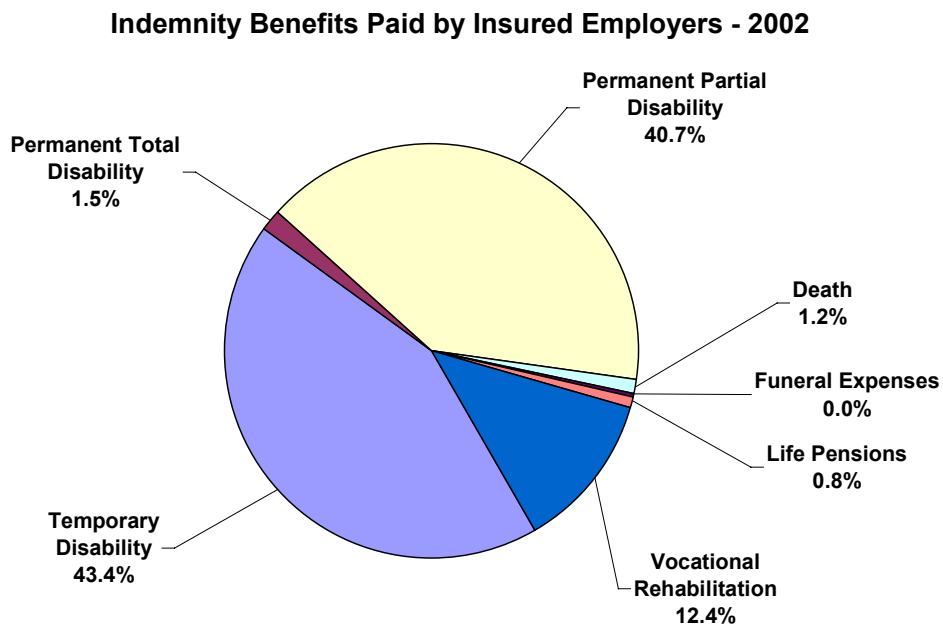
Indemnity Benefit (Thousand\$)	2002	2003	Change
Temporary Disability	\$1,737,135	\$1,998,466	\$261,331
Permanent Total Disability	\$60,486	\$71,310	\$10,824
Permanent Partial Disability	\$1,629,800	\$1,894,185	\$264,385
Death	\$46,458	\$46,701	\$243
Funeral Expenses	\$1,700	\$1,400	-\$300
Life Pensions	\$32,315	\$33,228	\$913
Vocational Rehabilitation	\$494,524	\$585,988	\$91,464
Total	\$4,002,418	\$4,631,278	\$628,860

Paid by Self-Insured Employers*

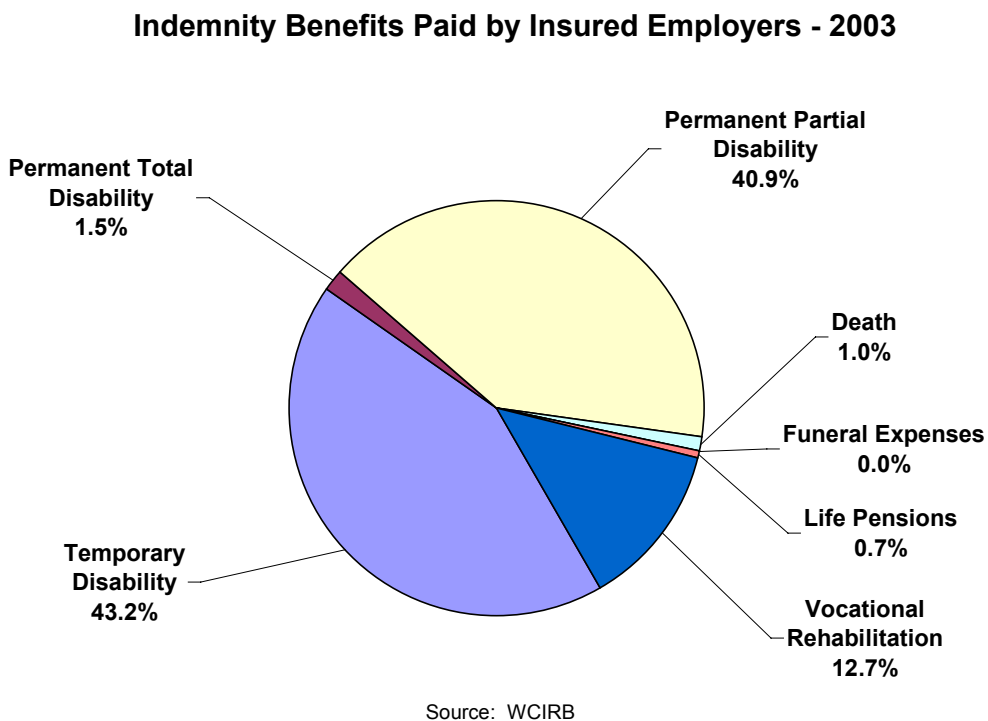
Indemnity Benefit (Thousand\$)	2002	2003	Change
Temporary Disability	\$434,284	\$499,617	\$65,333
Permanent Total Disability	\$15,122	\$17,828	\$2,706
Permanent Partial Disability	\$407,450	\$473,546	\$66,096
Death	\$11,615	\$11,675	\$61
Funeral Expenses	\$425	\$350	-\$75
Life Pensions	\$8,079	\$8,307	\$228
Vocational Rehabilitation	\$123,631	\$146,497	\$22,866
Total	\$1,000,605	\$1,157,820	\$157,215

The following shows the proportion of the types of indemnity benefits paid by insured employers. (Our method of estimating total system costs and self-insured costs based on insured employer costs would yield the same proportions for system-wide and self-insured.)

Indemnity Benefits Paid by Insured Employers – 2002



Indemnity Benefits Paid by Insured Employers – 2003



WORKERS' COMPENSATION SYSTEM PERFORMANCE

Medical Benefits

As reported by the WCIRB, workers' compensation medical benefits paid during 2003 by insured employers totaled \$4.9 billion, an increase from the \$4.1 billion paid in 2002.

System-Wide Estimated Costs - Medical Benefits Paid

Medical Benefits (Thousand\$)	2002	2003 Change	
Physicians	\$2,572,898	\$3,207,516	\$634,619
Capitated Medical	\$7,710	\$11,386	\$3,676
Hospital	\$1,409,135	\$1,676,395	\$267,260
Pharmacy	\$370,774	\$569,395	\$198,621
Payments Made Directly to Patient	\$297,428	\$223,903	-\$73,525
Medical-Legal Evaluation	\$111,435	\$160,429	\$48,994
Medical Cost Containment Programs*	\$356,781	\$243,709	-\$113,073
Total	\$5,126,160	\$6,092,733	\$966,573

Paid by Insured Employers

Medical Benefits (Thousand\$)	2002	2003 Change	
Physicians	\$2,058,318	\$2,566,013	\$507,695
Capitated Medical	\$6,168	\$9,109	\$2,941
Hospital	\$1,127,308	\$1,341,116	\$213,808
Pharmacy	\$296,619	\$455,516	\$158,897
Payments Made Directly to Patient	\$237,942	\$179,122	-\$58,820
Medical-Legal Evaluation	\$89,148	\$128,343	\$39,195
Medical Cost-Containment Programs*	\$285,425	\$194,967	-\$90,458
Total	\$4,100,928	\$4,874,186	\$773,258

Paid by Self-insured Employers**

Medical Benefits (Thousand\$)	2002	2003 Change	
Physicians	\$514,580	\$641,503	\$126,924
Capitated Medical	\$1,542	\$2,277	\$735
Hospital	\$281,827	\$335,279	\$53,452
Pharmacy	\$74,155	\$113,879	\$39,724
Payments Made Directly to Patient	\$59,486	\$44,781	-\$14,705
Medical-Legal Evaluation	\$22,287	\$32,086	\$9,799
Medical Cost-Containment Programs*	\$71,356	\$48,742	-\$22,615
Total	\$1,025,232	\$1,218,547	\$193,315

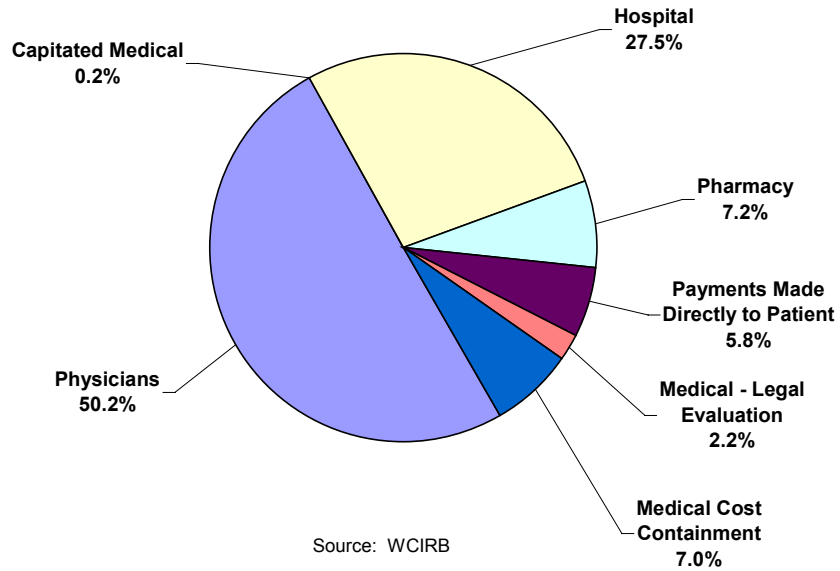
* Figures for medical cost-containment programs are based on a sample of insurers who reported medical cost-containment expenses to WCIRB.

** Figures estimated based on insured employers' costs.

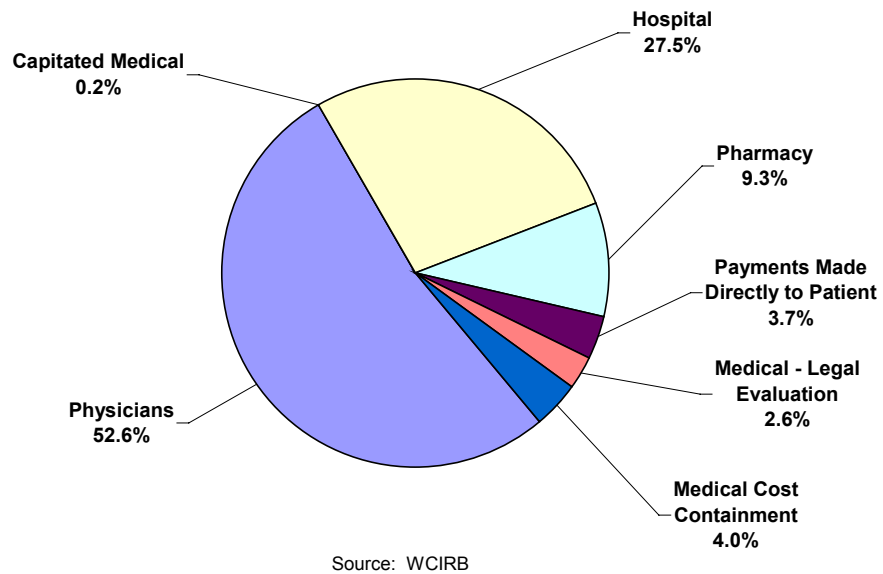
Self-insured employers are estimated to comprise 20 percent of all California employers.

WORKERS' COMPENSATION SYSTEM PERFORMANCE

Medical Benefits Paid by Insured Employers 2002



Medical Benefits Paid by Insured Employers - 2003

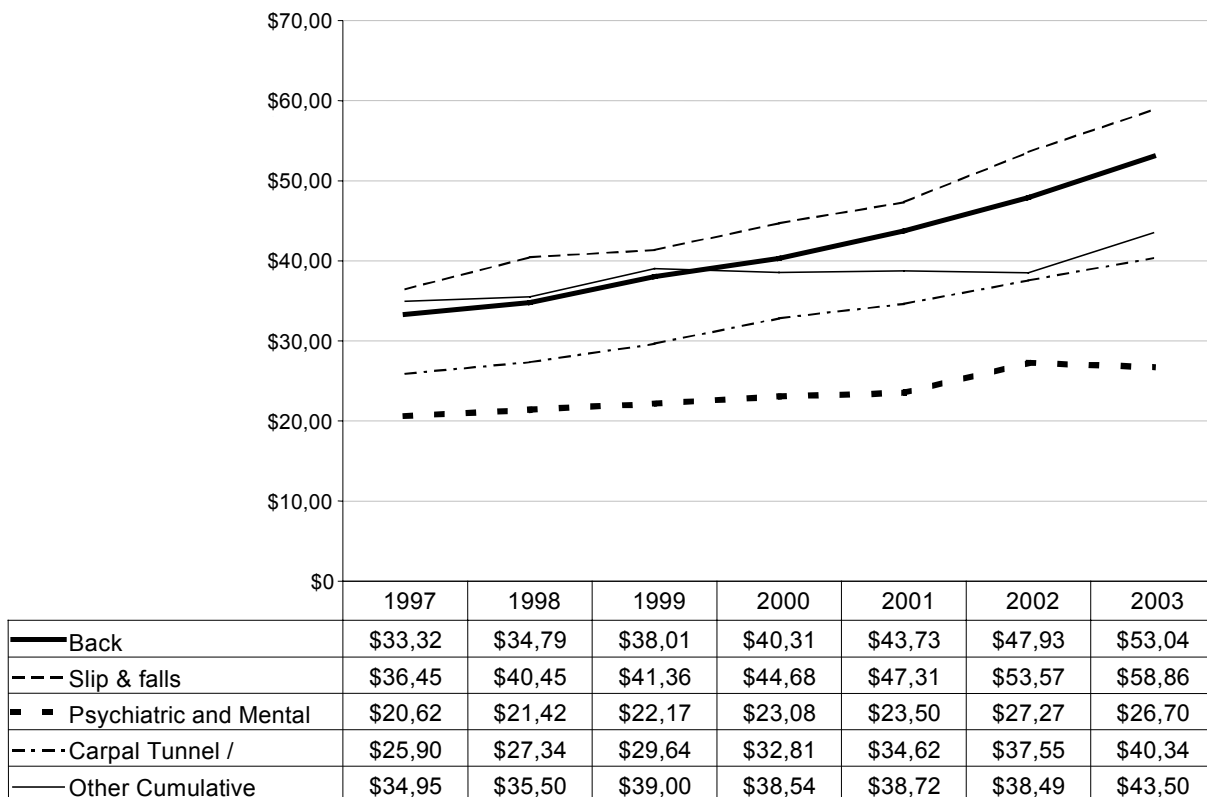


WORKERS' COMPENSATION SYSTEM PERFORMANCE

Average Cost per Claim by Type of Injury

As shown in the following chart, there have been significant increases in average cost per claim for several types of injury. From 1997 to 2003, slips and falls increased by 61 percent, back injuries by 59 percent, followed by carpal tunnel/repetitive motion injuries by 56 percent. On the other hand, average costs of psychiatric and mental stress claims appeared to level off until 2001, then increased slightly in 2002, and decreased slightly in 2003.

Average Cost per WC Claim by Type of Injury*

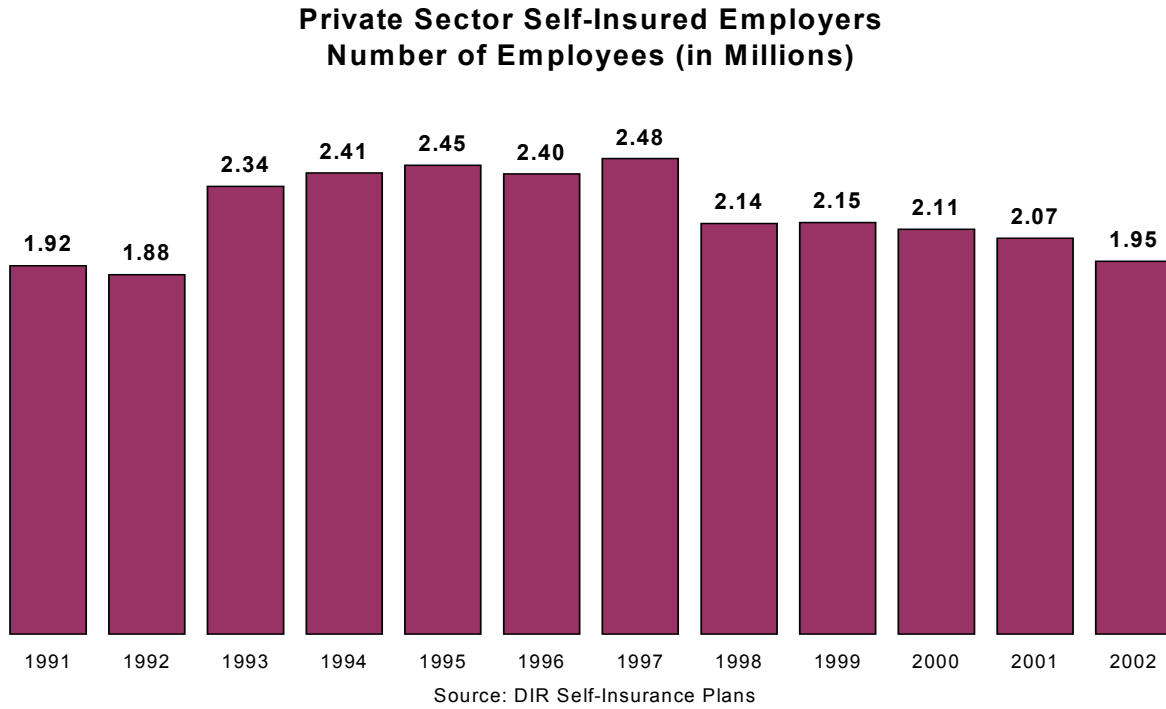


* These categories are not mutually exclusive. For example, some back injuries result from slips and falls.

Source: WCIRB

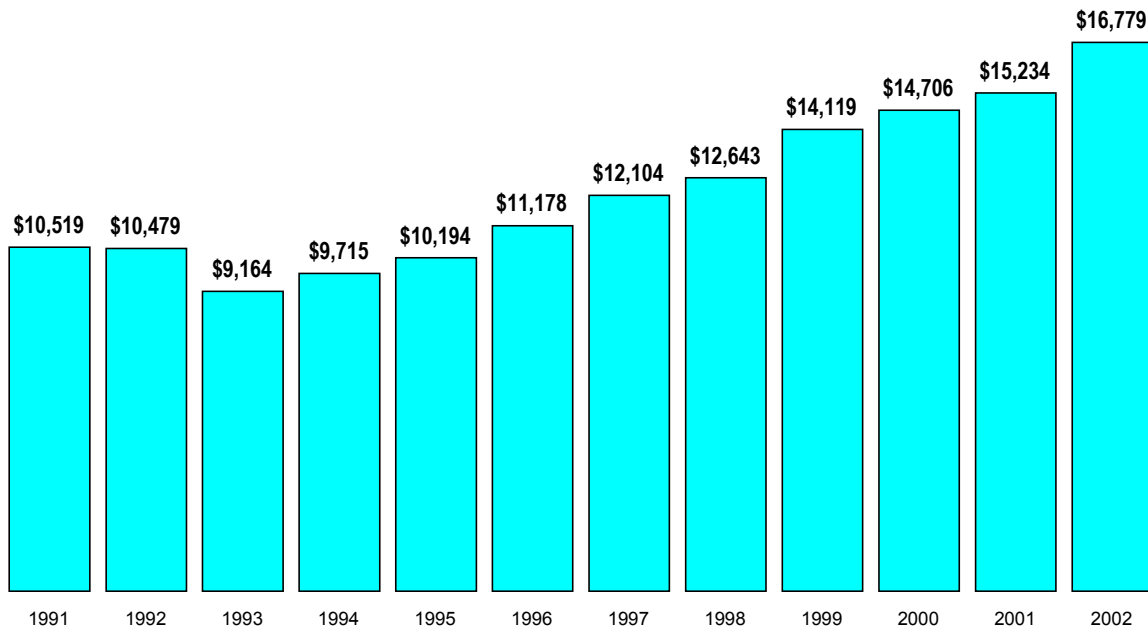
WORKERS' COMPENSATION SYSTEM PERFORMANCE

Workers' Compensation Expenditures - Private Sector Self-insured Employers



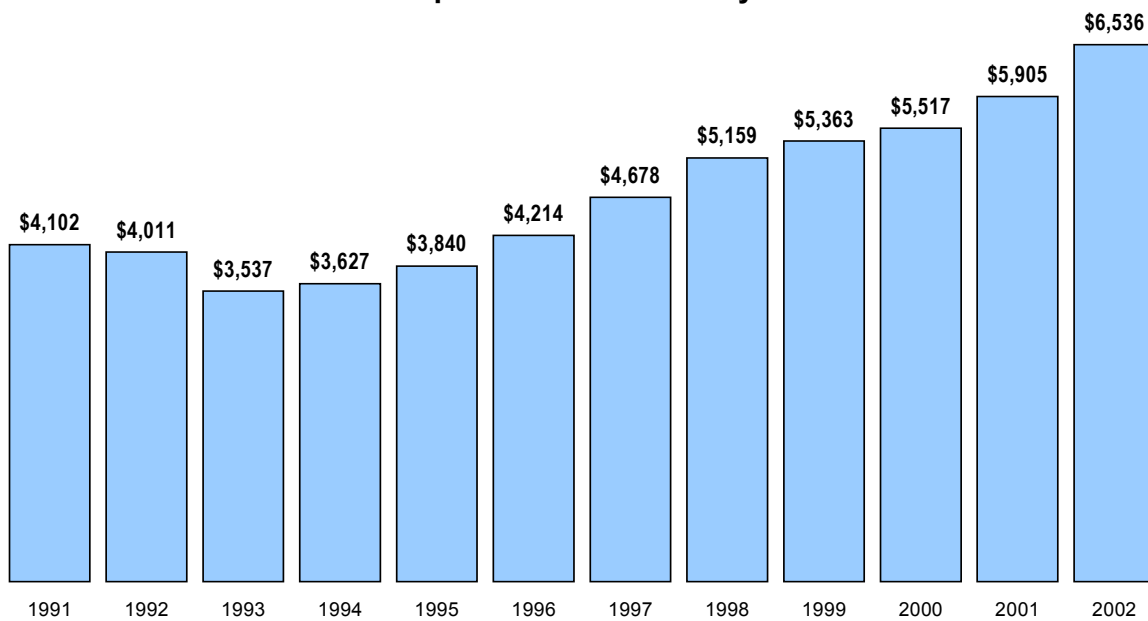
WORKERS' COMPENSATION SYSTEM PERFORMANCE

Private Sector Self-insured Employers Incurred Cost per Indemnity Claim



Source: DIR Self-Insurance Plans

Private Sector Self-Insured Employers Incurred Cost per Claim - Indemnity and Medical



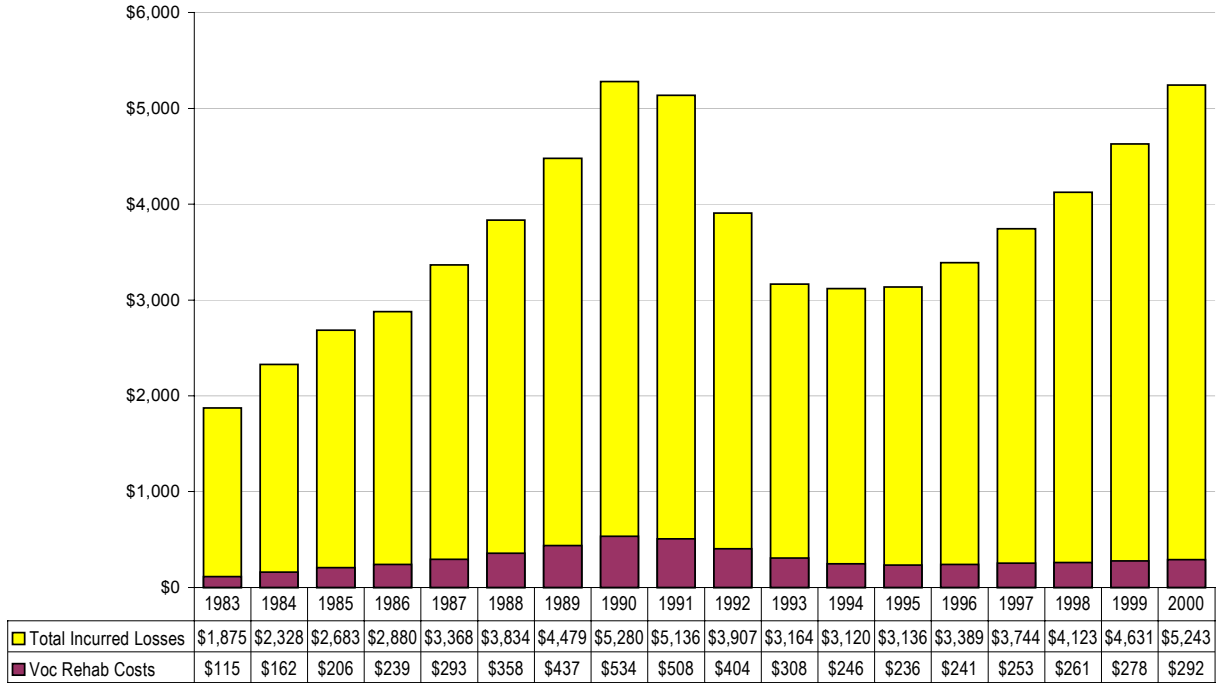
Source: DIR Self-Insurance Plans

WORKERS' COMPENSATION SYSTEM PERFORMANCE

Vocational Rehabilitation Costs

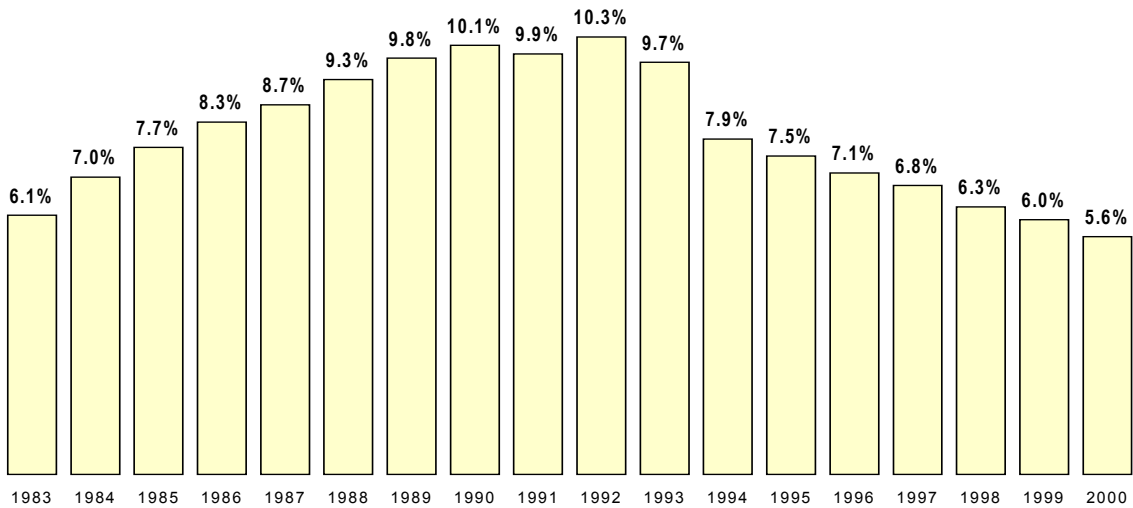
Total workers' compensation vocational rehabilitation costs rose from policy-year 1983 to 1990, then declined thereafter, slightly increasing in 1999 and returning to the 1990 level in 2000. Total incurred losses peaked in 1990, declined to 1995, and then increased again through 2000.

Vocational Rehabilitation Costs compared with Total Incurred Losses (in Million\$)



Source: WCIRB

Vocational Rehabilitation Costs as Percent of Total Incurred Losses



Source: WCIRB

Fraud

During the past decade, there has been an energetic and rapidly growing campaign in the State against workers' compensation fraud. This report on the nature and results of that campaign is based primarily on information obtained from the California Department of Insurance (CDI) Fraud Division, as well as applicable Insurance Code and Labor Code sections and data published in periodic Bulletin[s] of the California Workers' Compensation Institute (CWCI).

Although workers' compensation fraud was a prosecutable offence under previous laws, a 1988 report of California's Little Hoover Commission observed that insurers had referred 160 claims to the CDI since 1979 and that the Fraud Bureau (now Fraud Division) had investigated only 17 of those cases. Only one case had been prosecuted.

In 1991, a new anti-fraud law, SB 1218 (Presley), was enacted. This legislation attacked some of the causes of past failure by guaranteeing insurers immunity from civil liability for reporting suspected fraud to appropriate government agencies. In addition, the new law established stiffer penalties of up to five years imprisonment for persons filing false or fraudulent claims, and subjected physicians and attorneys who engaged in specified fraudulent activity and of professional discipline including loss of State licenses. Most importantly, the legislation also established a specially funded program to combat workers' compensation fraud.

The funding level for this program is set annually by the Workers' Compensation Fraud Assessment Commission (WCFAC). WCFAC is composed of five members consisting of two representatives of self-insured employers, one representative of insured employers, one representative of workers' compensation insurers, and the President of State Compensation Insurance Fund (SCIF), or his or her designee. The members are appointed by the Governor for four-year terms.

Funding for the program is derived from an annual assessment on employers. The assessment applied to insured employers is based on the dollar amount of their workers' compensation insurance. The assessment on self-insured employers is based on payroll. The initial assessment for the program was set at \$3 million. However, by 1994, the annual assessment had increased to \$25 million. In 1997, the annual assessment was further increased to \$28.5 million. Following an additional increase, the annual assessment for fiscal year 2001-02 and 2002-03 was \$31.5 million.

Originally, half of the funding went to the Fraud Division and half to local district attorneys. However, in 1997, local district attorneys received a greater proportion of the annual assessment. In March 1999, WCFAC allocated \$13.16 million in funds to the Fraud Division and \$16.84 million for local district attorneys. In fiscal years 2001-02 and 2002-03, WCFAC allocated \$14.2 million in funds to the Fraud Division and \$17.3 million for local district attorneys.

Each county in the State is eligible for funds to prosecute workers' compensation fraud cases. By statute, each district attorney seeking a portion of the funds must submit an application to the Insurance Commissioner (IC) setting forth in detail the proposed use of any funds provided. Any district attorney receiving such funds must agree that the funds will be used solely for investigating and prosecuting cases of workers' compensation fraud and must submit an annual report to the IC with respect to the success of the district attorney's efforts. The IC makes the distribution of funds among the district attorneys who apply with the advice and consent of the Fraud Division and WCFAC. Apparently, some monies originally allocated by WCFAC are retained in order to pay for investigations and prosecutions in those counties that have not received annual funding.

WORKERS' COMPENSATION SYSTEM PERFORMANCE

According to the Fraud Division, the types of complaints or cases investigated include (1) "phony workers' compensation claims," including claims made by workers, medical providers, pharmacies, attorneys and others, (2) "fraudulent denial of workers' compensation benefits," and (3) "workers' compensation premium fraud by employers." There are criminal prohibitions against each of these activities, primarily under Insurance Code Sections 1871.4, 11760 and 11880. The sources of Fraud Division investigations include referrals by insurance companies and self-insured employers, citizen complaints and Division-initiated cases.

Insurance Code sections 1877-1877.5 are the "Workers' Compensation Insurance Fraud Reporting Act." Pursuant to these and other provisions, all licensed insurers doing business in the State and all self-insured employers that suspect fraudulent claim activity must report it to the Fraud Division and the local district attorney. A report must be made within 30 days of knowing or reasonably believing a claim to be fraudulent. The report must be submitted on a form prescribed by CDI.

In this connection, every licensed insurer doing business in the State is required to maintain a Special Investigation Unit (SIU). The requirements' intent is to establish a systematic method for detecting and reporting suspected fraudulent claims. SIU Annual Compliance Reports are required to be sent to the Fraud Division detailing how insurers are complying with CDI regulations. This report must describe the insurer's anti-fraud plan, as well as current calendar-year activities and future planned activities. This includes reporting the number of claims processed during the calendar year, the number of claims referred to the SIU, and the number of suspected fraudulent claims reported to the Fraud Division and local district attorneys.

Insurance Code Section 1877.3 provides, in part, that when an insurer knows of a person or entity whom it believes has committed a fraudulent act relating to a workers' compensation claim or policy, the insurer must notify the local district attorney's office and the CDI Fraud Division. In practice, it appears that most, but not all, suspected cases are referred to the Fraud Division and that a slightly smaller number are referred to local district attorneys. In addition, the Fraud Division and local district attorneys may receive referrals from outside persons that are not tracked by both entities. As a consequence of these differences, the number of referrals and arrests reported by the Fraud Division is usually somewhat lower than figures reported by CWCII in its periodic surveys of insurers and large self-insured employers.

Suspected Fraudulent Claims

Fiscal Year	Suspected Fraudulent Claims
1992-93	8,342
1993-94	7,284
1994-95	4,004
1995-96	3,947
1996-97	3,281
1997-98	4,331
1998-99	3,363
1999-00	3,362
2000-01	3,548
2001-02	2,968
2002-03	3,544

Source: California Department of Insurance, Fraud Division

WORKERS' COMPENSATION SYSTEM PERFORMANCE

According to the CDI Fraud Division, the number of suspected fraudulent claims has fluctuated around 3,500 annually. Several reasons for this trend include:

- Lower claims frequency.
- Removal of major medical and legal mills involved in illegal activities.
- Reduction in insurers' special investigation units (SIUs).
- Fewer insurance companies in the California workers' compensation market.
- Deterrence effect resulting from statewide anti-fraud efforts of local district attorneys, the Fraud Division and the insurance industry.

After a fraud referral, an investigation must take place before any arrests are made. The average time from referral to arrest is usually around nine months. For this reason, the number of arrests does not necessarily correspond to the number of referrals in a particular year.

Workers' Compensation Fraud Suspect Arrests

Fiscal Year	Fraud Suspect Arrests
1992-93	24
1993-94	116
1994-95	163
1995-96	202
1996-97	207
1997-98	298
1998-99	216
1999-00	226
2000-01	170
2001-02	290
2002-03	369

Source: California Department of Insurance, Fraud Division

Further information was obtained on the number of workers' compensation fraud convictions and the classifications of the persons convicted. Based on information from the Fraud Division and CWCI Bulletin[s], the number of workers' compensation fraud suspects *convicted* annually is as follows:

Workers' Compensation Fraud Suspect Convictions

Fiscal Year	Fraud Suspect Convictions
1993-94	181
1994-95	198
1995-96	248
1996 calendar year	177 (CWCI)
1997 calendar year	299 (CWCI)
1998 calendar year	268 (CWC)
1999 calendar year	258 (CWCI)
2000-01	367
2001-02	263
2002-03	293

Source: California Department of Insurance, Fraud Division and California Workers' Compensation Institute

WORKERS' COMPENSATION SYSTEM PERFORMANCE

According to the CHSWC report and the CDI Fraud Division, the rate of conviction appears to vary greatly from year to year. Fraud Division statistics indicate local district attorneys prosecuted 363 defendants in Fiscal Year 1993-1994, generating 181 convictions (49.9 percent). In Fiscal Year 1994-1995, there were 422 prosecutions and 198 convictions (46.9 percent). During Fiscal Year 1995-1996, there were 346 prosecutions and 248 convictions (71.7 percent). In fiscal year 2000-01, there were 716 prosecutions and 367 convictions (51 percent). In fiscal year 2002-03, there were 660 prosecutions and 293 convictions (44 percent). An issue about which figures may not be available is the percentage of convictions based on trials versus plea bargains. Given the general nature of criminal proceedings, it is assumed that the number of convictions based on plea bargains is high. Factors influencing conviction rates and the extent of plea bargains are not known.

Types of Workers' Compensation Fraud Investigations

The following table indicates the number and types of investigations opened and carried for fiscal years 2001-02 and 2002-03. Applicant fraud appears to be the area generating the most cases followed by premium fraud and medical provider fraud.

Type of Investigation	Fiscal Year 2002-03 Cases Number/Percent	Fiscal Year 2001-02 Cases Number/Percent
Applicant	1,263 - 72.63%	1,293 - 79.37%
Premium	207 - 11.90%	159 - 9.76%
Fraud Rings	7 - 0.4%	1 - 0.06%
Capping	5 - 0.28%	6 - 0.37%
Medical Provider	97 - 5.6%	98 - 6%
Insider	6 - 0.34%	8 - .49%
Other	93 - 5.3%	64 - 3.93%
Uninsured	61 - 3.5%	N/A
TOTAL	1,739	1,629

Source: California Department of Insurance, Fraud Division

Geographically, the great majority of suspected fraud cases come from Los Angeles County (21 percent) followed by Sonoma and San Bernardino Counties at 7 percent of cases.

Potential Areas for Improvement in Workers' Compensation Anti-fraud Efforts

The California State Auditor Report "Workers' Compensation Fraud: Detection and Prevention Efforts Are Poorly Planned and Lack Accountability," published in April 2004, reported that:

- Currently, 30 million dollars a year is spent on anti-fraud activities seemingly without an overall strategy to combat workers' compensation fraud.
- Baselines for measuring the level of fraud have not been developed. There is currently no way to evaluate if anti-fraud efforts have reduced the overall cost that fraud adds to the system by as much or more than what is spent annually to fight it.
- "Efforts to detect and prevent workers' compensation fraud are inadequate."
- There is a lack of cooperation between agencies in fighting workers' compensation fraud.

CHSWC Anti-fraud Recommendations

- Implement the coordinated data-matching project.

In February 1997, CHSWC conducted a public fact-finding hearing on workers' compensation anti-fraud activities and determined that some employers were not complying with the requirement to secure workers' compensation coverage for their workers.

CHSWC staff and a research team developed an issue paper containing recommendations to identify illegally uninsured employers and bring them into compliance. CHSWC then voted to engage in three proposed pilot projects and to create a CHWSC Uninsured Employer Roundtable to consider and suggest Legislative changes.

The CHSWC study of these pilots, entitled "CHSWC Recommendations to Identify Illegally Uninsured Employers and Bring Them into Compliance," is available at <http://www.dir.ca.gov/CHSWC/uefcover.html>.

These pilot project activities involved data matching and coordination among DIR, the Employment Development Department (EDD), and WCIRB. The goals of these pilot projects were to:

- Protect workers from lack of workers' compensation coverage.
 - Identify illegally uninsured employers and bring them into compliance.
 - Reduce the cost to the State's Uninsured Employers Fund (UEF) and General Fund.
 - Reduce the need of workers who are injured while working for illegally uninsured employers from using other social and benefit systems.
 - Level the economic playing field for insured employers.
 - Protect the State from increased liability faced by UEF.
 - Determine the effectiveness and cost-benefit of a matching records program to identify illegally uninsured employers and bring them into compliance.
- Consider that part of the budget that goes to CDI should properly allocate funds for research, sampling, and fraud detection. It is important to put in an integrated monitoring system for cost, quality, and access. Such a system could also check for aberrations in utilization by medical providers.
 - To the extent permitted by law and regulation, private and public agencies should share information that may assist in the detection and investigation of suspected fraud.

Medical-legal Issues

“Baseball Arbitration”

Final offer arbitration, also known as “baseball arbitration,” was introduced into the workers' compensation decision process as a result of the 1993 reforms.

Labor Code Section 4065 provides that where either the employer or the employee has obtained evaluations of the employee's permanent impairment and limitations from a qualified medical evaluator (QME) under Section 4061 and either party contests the comprehensive medical evaluation of the other party, the workers' compensation judge or the appeals board shall be limited to choosing between either party's proposed permanent disability (PD) rating. The employee's PD award shall be adjusted based on the disability rating selected by the appeals board.

In April 1999, the Commission on Health and Safety and Workers' Compensation (CHSWC) requested a report on the effectiveness and experience of “baseball arbitration.” CHSWC was informed that workers' compensation judges are having problems with the application of Section 4065 and that many are reluctant to use it. This is confirmed by the reported cases in the CHSWC study entitled “Preliminary Evidence on the Implementation of Baseball Arbitration.” The parties are equally adept at avoiding “baseball arbitration.” The literature review, preliminary data analysis, and legal and anecdotal evidence all indicate that there are problems with the implementation of final offer arbitration in workers' compensation. At CHSWC's meeting on December 16, 1999, in Los Angeles, the Commission voted unanimously to recommend the repeal of Labor Code Section 4065.

Impact of Assembly Bill 749

Assembly Bill (AB) 749 repeals Labor Code Section 4065 and “baseball arbitration” effective January 1, 2003.

For further information...



CHSWC Report: “Preliminary Evidence on the Implementation of Baseball Arbitration” (1999). Available at www.dir.ca.gov/chswc.

Treating Physician Presumption

Background

The 1993 reforms increased the role of the primary treating physician (PTP). They require the PTP to render opinions on all medical issues necessary to determine eligibility for compensation, and when additional medical-legal reports are obtained, the findings of the treating physician are presumed to be correct. These legislative changes had the effect of reintroducing the importance of the PTP that had been curtailed by the 1989 reforms and adding the additional authority of rebuttable presumption.

In 1996, the Workers' Compensation Appeals Board (WCAB) issued an *en banc* decision, *Minniear v. Mt. San Antonio Community College District* 61CCC 1055 CWC 261, which had

WORKERS' COMPENSATION SYSTEM PERFORMANCE

the effect of extending the PTP presumption to disputes over medical treatment as well as medical-legal issues.

CHSWC undertook an evaluation of the quality of treating physician reports and the cost-benefit of the PTP presumption under Labor Code Section 4062.9. The study concluded that changes to the status of the PTP made during the 1993 reforms have resulted in medical-legal decisions based on poor-quality reports without any apparent cost savings. In addition, consensus exists within WCAB that the presumption has increased litigation and curtailed the discretion of workers' compensation judges to craft reasonable decisions within the range of evidence.

CHSWC recommended that the Legislature consider setting the standard at a different level which gives great weight to the treating physician but allows judges to use judicial discretion and to award based on the range of evidence.

In May 2000, the Legislature requested that CHSWC update its study report on the presumption of correctness for treating physician reports. An updated report was conducted in 2002, which includes the impact on medical costs of the *Minniear* decision. Preliminary findings from the updated study indicate that *Minniear* had an important impact on the cost of medical treatment and the utilization of medical services. In summary:

- Before the *Minniear* decision, when the worker controlled medical treatment, the cost in any quarter was 7.8 percent higher than when the insurer/employer controlled the choice of physician.
- The *Minniear* decision had the effect of increasing this difference in average quarterly treatment costs when the worker controlled the choice of the physician by an additional 11.3 percent.
- Service utilization was 10.4 percent higher in any quarter when the worker controlled the choice of the physician. *Minniear* increased this difference by an additional 7.7 percent.

Impact of Assembly Bill 749

AB 749 provides that for injuries on or after January 1, 2003, the Labor Code Section 4062.9 presumption will only apply to the findings of personal physicians or personal chiropractors pre-designated before the injury.

Impact of Senate Bill 228

SB 228 repeals the presumption of correctness of the treating physician for medical treatment issues for all dates of injury, except in cases where the employee has pre-designated a personal doctor or chiropractor prior to the date of injury.

Impact of Senate Bill 899

Section 46 of SB 899 makes the repeal apply to all cases, regardless of the date of injury, but does not constitute good cause to reopen any existing WCAB decision.

For further information...



See the project synopsis in this section of this Annual Report: Update on Treating Physician Study.



CHSWC Report: "Report on the Quality of the Treating Physician Reports and the Cost-Benefit of Presumption in Favor of the Treating Physician" (1999). Available at www.dir.ca.gov/chswc.

WORKERS' COMPENSATION SYSTEM PERFORMANCE

Medical-legal Expenses

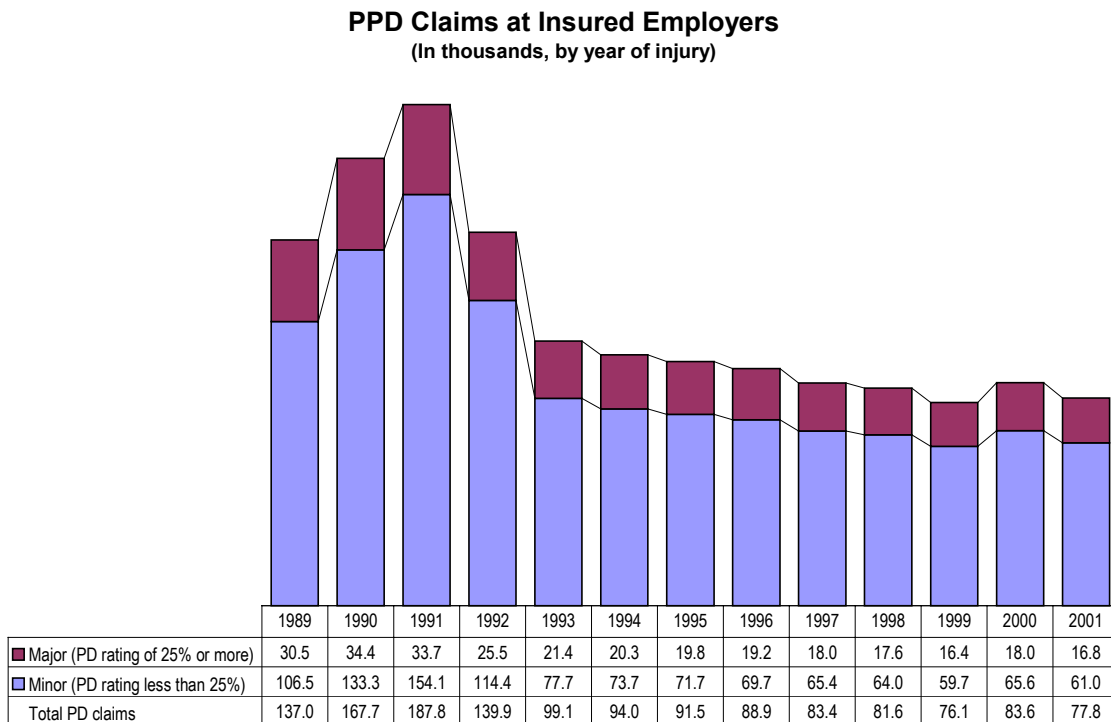
Reform legislation changes to the medical-legal process were intended to reduce both the cost and the frequency of litigation. Starting in 1989, legislative reforms restricted the number and lowered the cost of medical-legal evaluations needed to determine the extent of permanent disability (PD). The reform legislation also limited the workers' compensation judge to approving the PD rating proposed by one side or the other ("baseball arbitration"). In addition, the Legislature created the qualified medical evaluator (QME) designation and increased the importance of the treating physician's reports in the PD determination process.

In 1995, CHSWC contracted with the Survey Research Center at University of California Berkeley to assess the impact of the workers' compensation reform legislation on the workers' compensation medical-legal evaluation process.

This ongoing study has determined that during the 1990's, the cost of medical-legal examinations has seen dramatic improvement. As shown in the following discussions, this is due to reductions in all the factors that contribute to the total cost.

Permanent Disability Claims

The following chart displays the number of permanent partial disability (PPD) claims during each calendar year since 1989. Up through 1993, the Workers' Compensation Insurance Rating Bureau (WCIRB) created these data series from Individual Case Report Records submitted as part of the Unit Statistical Report. Since that time, the series has been discontinued, and estimates for 1994 and subsequent years are based on policy-year data adjusted to the calendar year and information on the frequency of all claims, including medical-only claims, that are still available on a calendar-year basis.



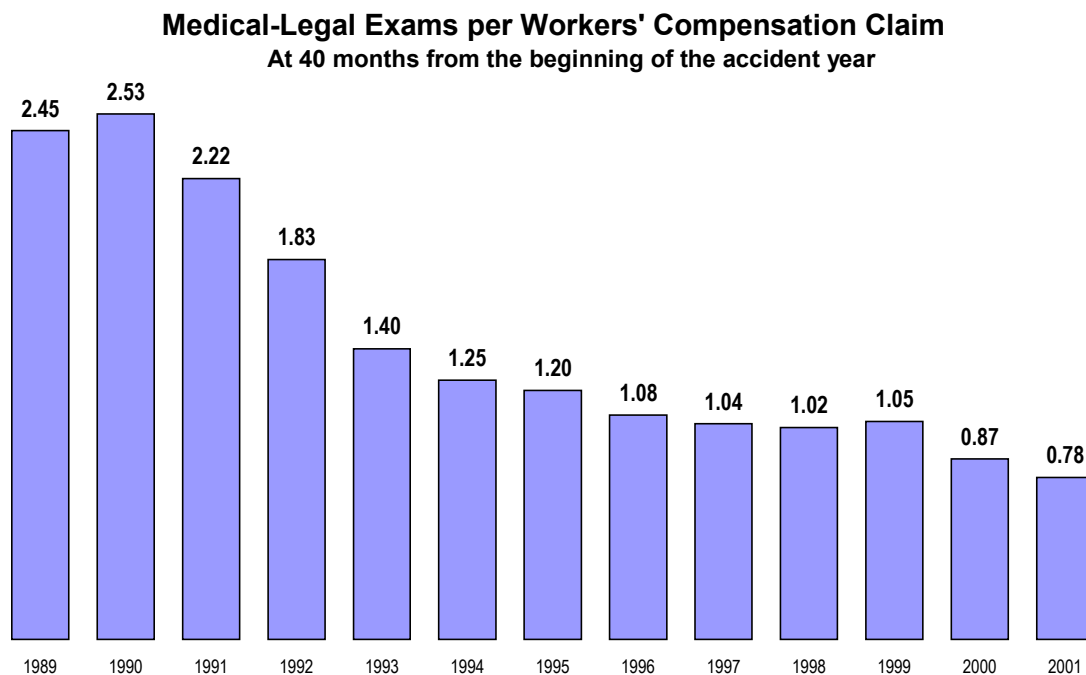
Source: WCIRB PD Survey

WORKERS' COMPENSATION SYSTEM PERFORMANCE

Medical-legal Examinations per Claim

The following chart illustrates the decline in the average number of medical-legal examinations per claim. The 68 percent decline reflects a series of reforms since 1989 and the impact of efforts against medical mills.

Reforms instituted in 1993 that advanced the role of the treating physician in the medical-legal process and granted the opinions of the treating physician a presumption of correctness were expected to reduce the average number of reports even more. Earlier CHSWC reports evaluating the treating physician did not find that these reforms had significant effect on the average number of reports per claim.



Source: WCIRB PD Survey

The change in the average number of reports between 1993 and 1994 was almost entirely the result of improvements that occurred during the course of 1993 calendar-year claims. These results were based on smaller surveys done by WCIRB when the claims were less mature. These later data, involving a larger sample of surveyed claims, suggest that the number of examinations per claim has continued to decline after leveling off between 1993 and 1995. The number of reports seems to have stabilized at just slightly more than an average of one report per PPD claim.

More recently, as the legal interpretation of treating physician presumption has evolved, the impact of this provision on the frequency of medical-legal reports may be more important. Particularly since 1999, there has been a substantial drop in the frequency of medical-legal reports on PD claims.

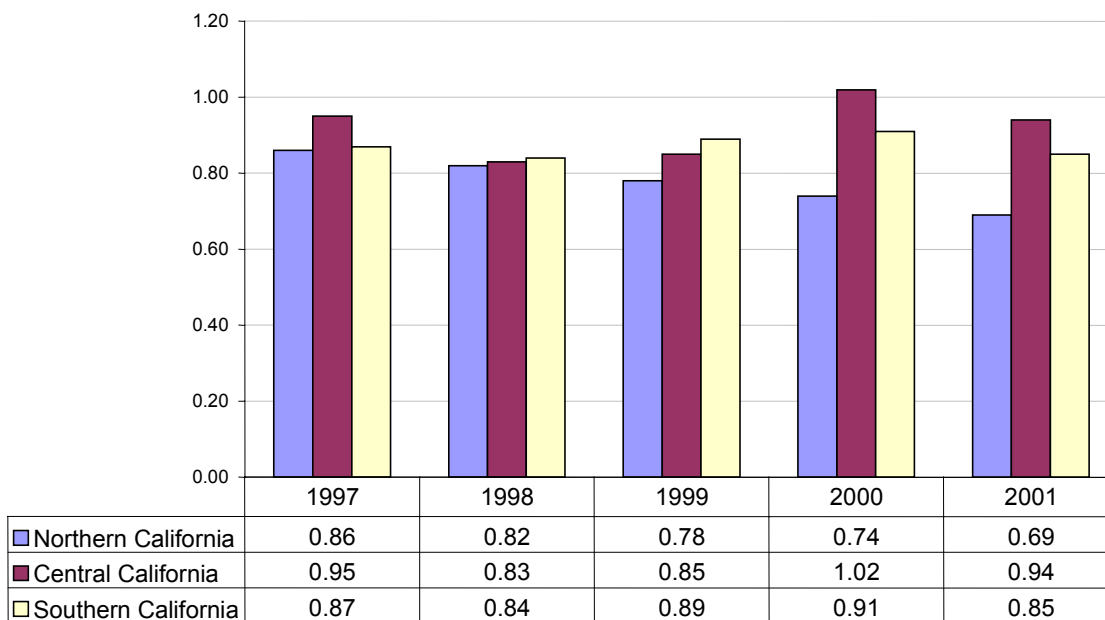
It is interesting to note that different regions of California are often thought to have different patterns of medical-legal reporting. Typically, southern California is thought to have more litigation with greater use of the medical-legal process. The revisions to the WCIRB Permanent Disability Survey, undertaken at the recommendation of CHSWC and instituted for the 1997

WORKERS' COMPENSATION SYSTEM PERFORMANCE

accident-year, explore new issues. A zip code field was added to analyze patterns in different regions.

The following chart demonstrates that the frequency with which medical-legal reports were used in 1997-1999 was not, in fact, different across the State's major regions. The average number of medical-legal reports per claim is statistically similar. However, as the number of reports has continued to decline between 1999 and 2001, the differences between regions have become more pronounced. It should be noted that to compare across all four available years, the period 1997-2001, which values claims at shorter maturity than the 40 months used in the above chart, is used. So the frequency is somewhat less.

Average Number of Medical-Legal Exams per Claim by Region
(at 34 months after beginning of accident year)



Source: WCIRB

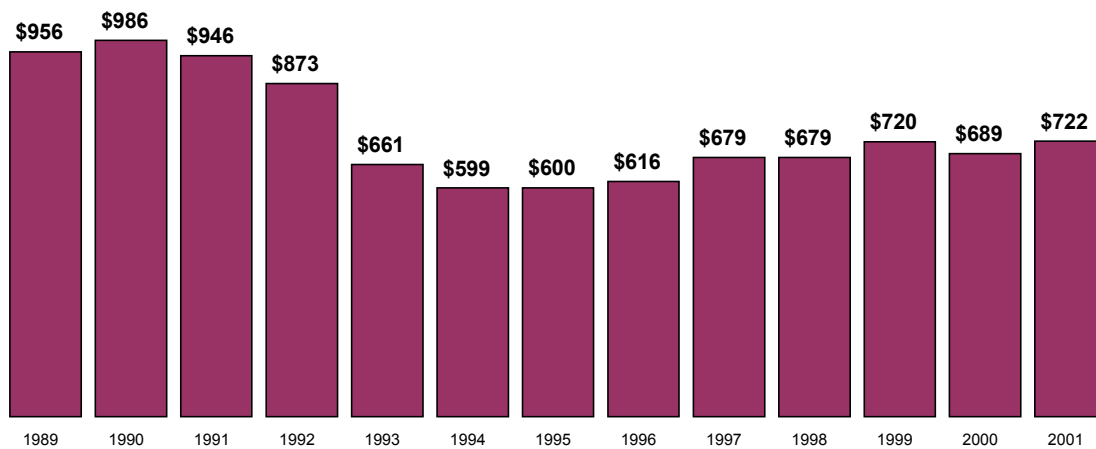
Cost per Medical-legal Examination

There are two reasons why the average cost per medical examination has declined by 27 percent since its peak in 1990. First, substantial changes were made to the structure of the Medical-Legal Fee Schedule that reduced the rates at which medical examinations are reimbursed. These restrictions were introduced in early 1993 and enforced after the start of August 1993.

Second, during this period, the average cost of medical examinations was also being affected by the frequency of psychiatric examinations. On average, psychiatric examinations are the most expensive examinations by specialty of provider. The relative portion of all examinations that is psychiatric examinations has declined since hitting a high in 1990-91, leading to a substantial improvement in the overall average cost per examination.

WORKERS' COMPENSATION SYSTEM PERFORMANCE

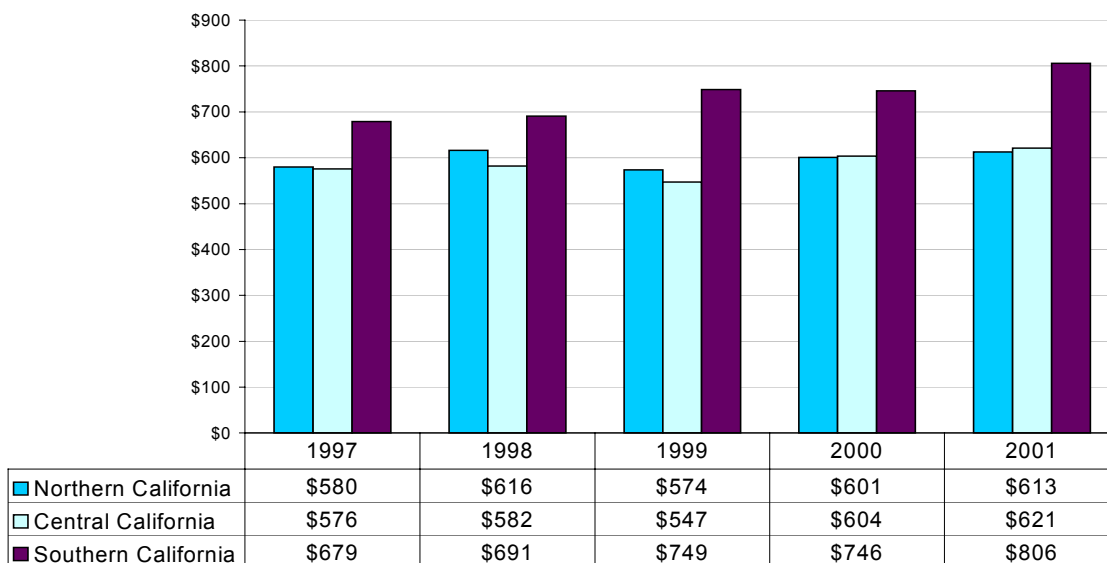
Average Cost of Medical-Legal Exam
(Evaluated at 40 months after beginning of accident year)



Source: WCIRB

Since the mid-1990's, the average cost of a medical-legal report has increased by 20 percent, even though the reimbursement under the Official Medical Fee Schedule (OMFS) has remained unchanged since 1993. The revised WCIRB PD Survey includes additional questions that reveal some of the potential causes of this increase in costs. The changes indicate various types of Fee Schedule classifications as well as geography. However, issues for injury-years before 1997 cannot be examined.

Average Cost of Medical-Legal Exam by Region
(at 34 months after beginning of accident year)



Source: WCIRB

WORKERS' COMPENSATION SYSTEM PERFORMANCE

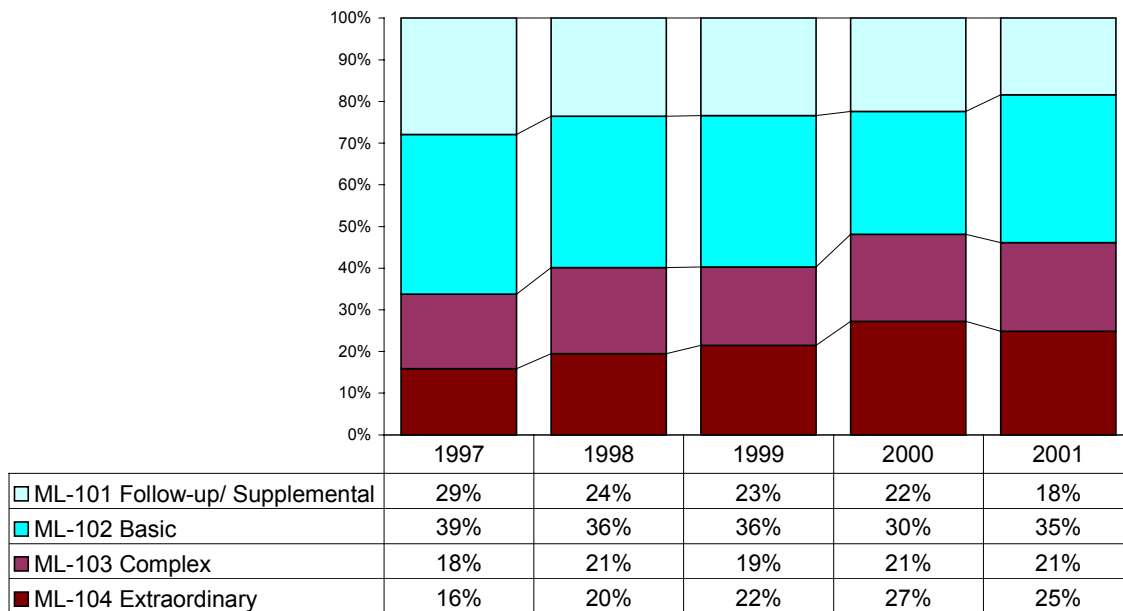
The survey data show that, on average, reports done in southern California have always been substantially more expensive. Increases in the average cost are being driven by claims in Southern California.

Further analysis indicates that the cost driver for the southern California trend is not the price paid for specific types of examinations. Rather, the mix of codes under which the reports are billed has changed to include a higher percentage of the most complex and expensive examinations and fewer of the least expensive type. The following table shows the cost and description from the Medical-Legal Fee Schedule.

Evaluation Type	Amount Presumed Reasonable
ML-101 Follow-up/ Supplemental	\$250
ML-102 Basic	\$500
ML-103 Complex	\$750
ML-104 Extraordinary	\$200/hour

The following chart indicates that the distribution of examinations in southern California has shifted away from ML-101 examinations to include a higher percentage of ML-104 examinations with "Extraordinary" complexity. At the same time, the average cost within each examination type did not exhibit a trend.

**Distribution of Medical-Legal Exam by Type
(Southern California)**

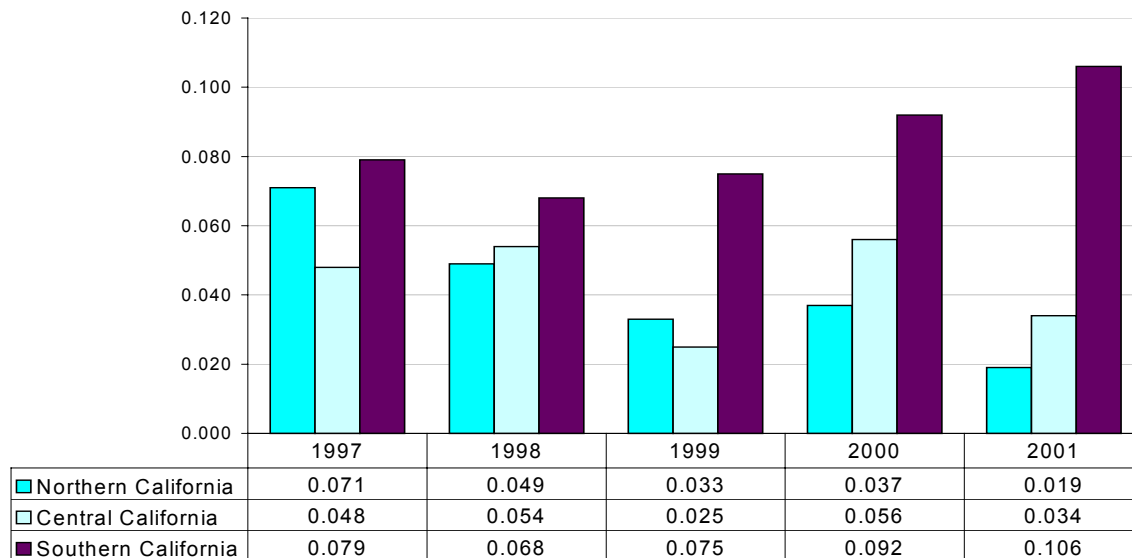


Source: WCIRB

WORKERS' COMPENSATION SYSTEM PERFORMANCE

Another possible explanation for the differing trends in the average cost per report and the increasing frequency of the most complex examinations in southern California is that psychiatric evaluations are more common in southern California. In addition, while the percent of PPD claims with psychiatric evaluations declined in the other two regions between 1997 and 2000, this was not true in the south. Psychiatric examinations are nearly always billed under the ML-104 code that is the most expensive.

**Average Number of Psychiatric Exams
per PPD Claim by Region**



Source: WCIRB

Medical-legal Cost Calculation

Total medical-legal costs are calculated by multiplying the number of PPD claims by the average number of medical-legal examinations per claim and by the average cost per medical-legal examination.

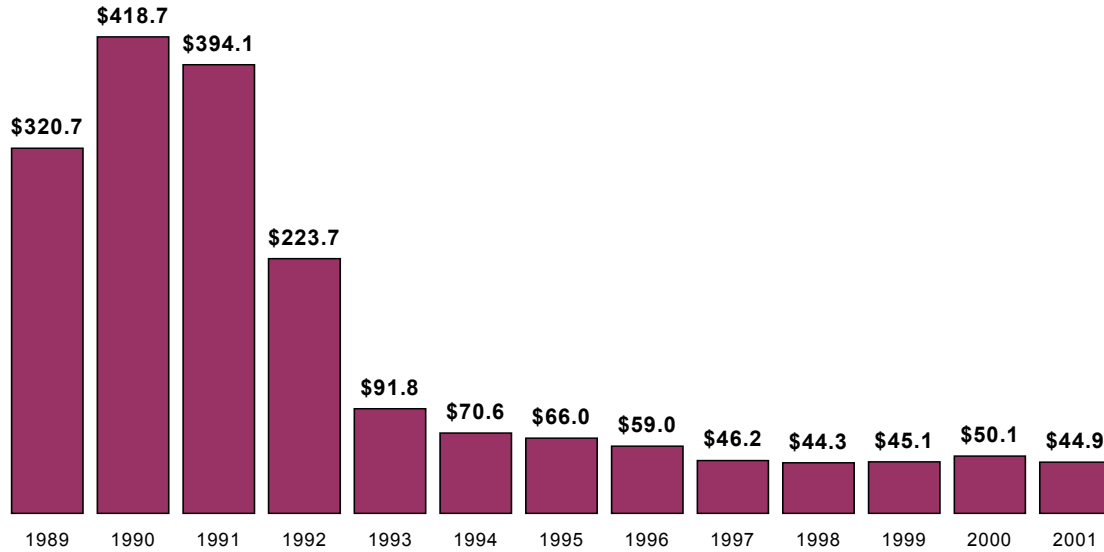
$$\text{Total Medical-Legal Cost} = \text{Number of PPD Claims} * \text{Average Number of Exams/Claim} * \text{Average Cost/Exam}$$

Medical-legal Costs

During the 1990's, the cost of medical-legal examinations improved dramatically. For the insured community, the total cost of medical-legal examinations performed on PPD claims by 40 months after the beginning of the accident year has declined from a high of \$419 million in 1990 to an estimated \$44.9 million for injuries occurring in 2001. This is an 89 percent decline since the beginning of the decade.

WORKERS' COMPENSATION SYSTEM PERFORMANCE

Medical-Legal Costs on PPD Claims at Insured Employers (In Million\$, 40 months after beginning of accident year)



Source: WCIRB PD Survey

Sources of Improvement in Medical-legal Costs

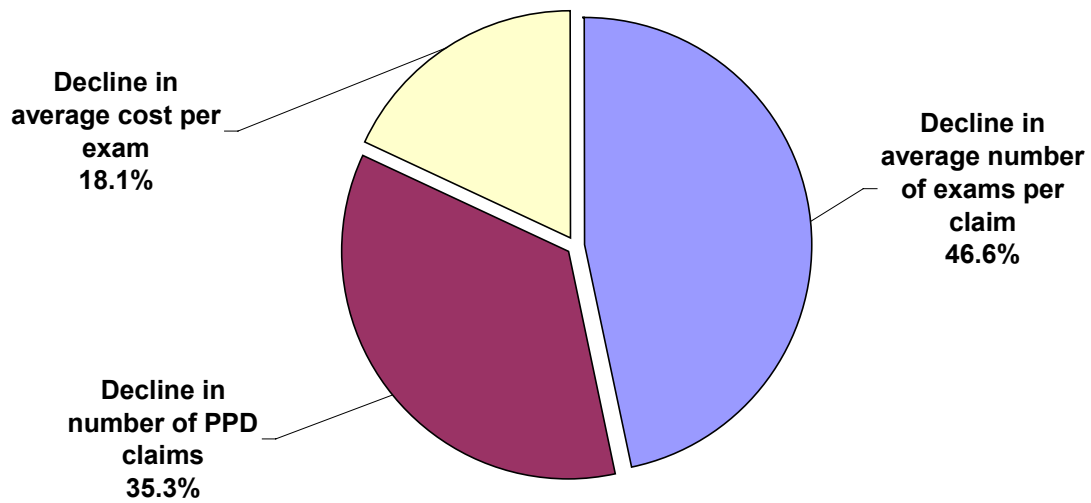
The decline in total medical-legal costs for insurers reflects improvements in all components of the cost structure during the 1990's.

As discussed in the previous sections, this substantial decline in total medical-legal costs for insurers results from significant decreases in all of the components of the cost structure.

The following chart shows how the cost savings break down by component since the beginning of the decade:

- About half (47 percent) of the cost savings is due to improvements in the medical-legal process that reduced the number of examinations performed per claim.
- Eighteen percent (18 percent) of the improvement is due to changes to the medical-legal fee schedule and treatment of psychiatric claims that reduced the average cost of examinations per claim.
- Thirty-five percent (35 percent) of the improvement is a result of the overall decline in the frequency of reported PPD claims.

Sources of Savings
Medical-Legal Costs on PPD Claims 1990-2001



Source: WCIRB

CHSWC PROJECTS AND STUDIES

INTRODUCTION

In response to its Labor Code mandate, the Commission on Health and Safety and Workers' Compensation (CHSWC) has engaged in many studies to examine health, safety and workers' compensation systems in California. CHSWC has concentrated these efforts on areas that are most critical and of concern to the community.

CHSWC studies are conducted by independent researchers under contract with the State of California. Advisory Committees, composed of interested members of the workers' compensation community and the public, provide comments, suggestions, data and feedback.

Studies were initially formed to evaluate changes to the system after the implementation of workers' compensation legislative reforms in the early 1990's and to assess the impact on workers and employers.

While that focus continues, the scope of CHSWC projects has also evolved in response to findings in the initial studies and to concerns and interests expressed by the Legislature and the workers' compensation community.

This report contains an overview of all CHSWC projects and studies followed by synopses of current and recently completed projects and studies. These are categorized as follows:

- Permanent Disability
- Return to Work
- Workers' Compensation Reforms
- Occupational Health and Safety
- Workers' Compensation Administration
- Information Needs
- Medical Care
- Community Concerns
- CHSWC Issue Papers
- Continuing and Upcoming Efforts



California Labor Code Section 77(a)

"The commission shall conduct a continuing examination of the workers' compensation system ... and of the state's activities to prevent industrial injuries and occupational diseases. The commission may contract for studies it deems necessary to carry out its responsibilities."

OVERVIEW OF ALL CHSWC PROJECTS AND STUDIES

Permanent Disability

Initial Wage Loss Analyses

Status: Completed

CHSWC Reports:

Compensating Permanent Workplace Injuries: A Study of the California System (RAND, 1998)
Findings and Recommendations on California's Permanent Partial Disability System-Executive Summary (RAND, 1997)

Website:

<http://www.rand.org/publications/MR/MR919/>

Enhancement of Wage Loss Analysis – Private Self-Insured Employers

Status: Completed

CHSWC Reports:

Permanent Disability, Private Self-Insured Firms (RAND, 2001)

Website:

<http://www.rand.org/publications/MR/MR1268/>

Enhancement of Wage Loss Analysis – Public Self-insured Employers

Status: In process

For further information...

See the project synopsis following.

Impact of Local Economic Conditions on Wage Loss

Status: Completed

CHSWC Report:

Trends in Earnings Loss from Disabling Workplace Injuries in California – The Role of Economic Conditions (RAND, 2002)

Website:

<http://www.rand.org/publications/MR/MR1268/>

Permanent Disability Rating Tool

Status: In process

CHSWC Report:

The Evaluation of California's Permanent Disability Rating Schedule: Interim Report (RAND, 2003)

Website:

<http://www.rand.org/publications/DB/DB443/index.html>

Return to Work

Analysis of Wage Loss and Return to Work (RTW) in Other States

Status: In process

For further information...

See the project synopsis following.

“Best Practices” Encouraging Return to Work

Status: In process

For further information...

See the project synopsis following.

Review of Literature on “Modified Work”

Status: Completed

For further information...

CHSWC Report:

Does Modified Work Facilitate Return to Work for Temporarily or Permanently Disabled Workers? (1997)

Website:

http://www.dir.ca.gov/CHSWC/Modified_Work_Krause.html

Policies and Strategies to Help Injured Workers Return to Sustained Employment

Status: Completed

For further information...

See the project synopsis following.

CHSWC Report:

Return to Work in California: Listening to Stakeholders' Voices (2001)

Website:

<http://www.dir.ca.gov/CHSWC/RTWinCA0701.html>

Primary Treating Physician Effectiveness in Return to Work (RTW) After Low-Back Injuries

Status: First phase: Completed

Second phase: In process

For further information...

See the project synopsis following.

CHSWC Report:

Physical Workplace Factors and Return to Work After Compensated Low-Back Injury: A Disability Phase-Specific Analysis” (JOEM, 2000)

Predictors and Measures of Return to Work

Status: Completed

CHSWC Report:

Determinants of Return to Work and Duration of Disability After Work-Related Injury of Illness:

Developing a Research Agenda: (2001)

Website:

<http://www.dir.ca.gov/chswc/Determinants.pdf>

Workers' Compensation Reforms

Assembly Bill 749 Analysis

CHSWC Report:

CHSWC and AB 749 (2002)

Website:

<http://www.dir.ca.gov/CHSWC/ab749.html>

CHSWC Report:

CHSWC and AB 749 as Amended (2002)

Website:

<http://www.dir.ca.gov/CHSWC/749Report/AB749asamended112202.html>

Evaluation of the Division of Workers' Compensation (DWC) Audit Function (Special Study at the Request of the Legislature)

Status: Completed

CHSWC Report:

CHSWC Report on the Division of Workers' Compensation Audit Function (1998)

Website:

<http://www.dir.ca.gov/CHSWC/FinalAuditReport.html> and

<http://www.dir.ca.gov/CHSWC/AuditSummaryCover.html>

Medical-legal Study

Status: Ongoing

For further information...

See the project synopsis following.

CHSWC Report:

Evaluating the Reforms of the Medical-Legal Process

Website:

http://www.dir.ca.gov/CHSWC/DisabilityReport/data_and_methodology.html for report on
"Evaluating the Reforms of the Medical-Legal Process Using the WCIRB Permanent Disability
Survey" (1997)

Website:

<http://www.dir.ca.gov/CHSWC/DisabilitySummary/execsummary.html> for the report on
"Evaluating the Reforms of the Medical-Legal Process Using the WCIRB Permanent Disability
Survey, Executive Summary" (1997)

Vocational Rehabilitation Study

Status: In process

For further information...

See "Best Practices" Encouraging Return to Work in project synopsis section.

CHSWC Report:

Vocational Rehabilitation Reform Evaluation (2000)

Website: <http://www.dir.ca.gov/CHSWC/Vocrehabreform2000.pdf>

CHSWC Report:

Vocational Rehabilitation Benefit: An Analysis of Costs, Characteristics, and the Impact of the 1993
Reforms" (1997)

Website: <http://www.dir.ca.gov/CHSWC/rehab/rehabcover.html>

"Carve-outs" – Alternative Workers' Compensation Systems

Status: Completed

CHSWC Report:

Carve-outs" in Workers' Comp: Analysis of Experience in the California Construction Industry" (1999)

Website: <http://www.dir.ca.gov/CHSWC/CarveOutReport/CarveoutReport.html>

Workers' Compensation Reforms (continued)

Evaluation of Treating Physician Reports and Presumption

Status: Completed

CHSWC Report:

Report on the Quality of the Treating Physician Reports and the Cost-Benefit of Presumption in Favor of the Treating Physician (1999)

Website:

<http://www.dir.ca.gov/CHSWC/Report99/TPhysician.html>

Update of Treating Physician Reports and Presumption Study

Status: Completed

For further information...

See the project synopsis following.

CHSWC Report:

Report on the Quality of the Treating Physician Reports and the Cost-Benefit of Presumption in Favor of the Treating Physician (1999)

Website:

<http://www.dir.ca.gov/CHSWC/Report99/TPHYCover.htm>

CHSWC Report:

Doctors and Courts: Do Legal Decisions Affect Medical Treatment Practice? (2002)

Website:

<http://www.dir.ca.gov/CHSWC/CHSWCLegalDecAffectMedTreatPractice/ptpfinalrpt.html>

Evaluation of Labor Code Section 5814 Penalty Provisions

Status: Completed

CHSWC Report:

Issue Paper on Labor Code Section 5814 (2000)

Website:

<http://www.dir.ca.gov/CHSWC/LC5814Cvr.html>

CHSWC Report:

Background Paper on Labor Code Section 5814 (1999)

Website:

<http://www.dir.ca.gov/CHSWC/LC5814Cvr.html>

“Baseball Arbitration” Provisions of Labor Code Section 4065

Status: Completed

CHSWC Report:

Preliminary Evidence on the Implementation of Baseball Arbitration (1999)

Website:

http://www.dir.ca.gov/CHSWC/Baseballarbfinal_percent27rptcover.htm

CHSWC Response to Questions from the Assembly Committee on Insurance

Status: Completed

CHSWC Report:

CHSWC Response to Questions from the Assembly Committee on Insurance (2001)

Occupational Safety and Health

Project: Worker Occupational Safety and Health Training and Education Program

Status: In process

For further information...

See the project synopsis following.

CHSWC Report:

State, National and International Safety and Health Training Program Resources (2003)

Website:

<http://www.dir.ca.gov/CHSWC/TrainingProgramsResources/Surveycover.html>

CHSWC Report:

Workplace Health and Safety Worker Training Materials: An Electronic Multilingual Resource List (2003)

Website:

<http://www.dir.ca.gov/chswc/MultilingualResourceSite2fromLOHP.doc>

California Partnership for Young Worker Health and Safety

Status: Ongoing

For further information...

See the project synopsis following.

CHSWC Report:

Protecting and Educating Young Workers: Report of the California Study Group on Young Worker Health and Safety" (1999)

Website:

www.youngworkers.org for the California Young Worker Resource Network, providing information for teens, teen workers in agriculture, employers, and educators

Website:

<http://www.dir.ca.gov/chswc/TrainingProgramsResources/Surveycover.html>

Project: Photography Exhibit and Teen Workshops

Status: In process

For further information...

See the project synopsis following.

Cross-state Comparison of Occupational Injury Rates and Time to Return to Work

Status: In process

For further information...

See the project synopsis following.

Workers' Compensation Administration

Workers' Compensation Court Management and Judicial Function Study

Status: Completed

CHSWC Report:

Improving Dispute Resolution for California's Injured Workers (RAND, 2003)

Website:

<http://www.rand.org/publications/MR/MR1425/index.html>

Court Technology Project

Status: Completed

CHSWC Report:

Briefing on the Use of Technology in the Courts" (2003)

Feasibility Study Report (Gartner, 2003)

Local Forms and Procedures – Labor Code Section 5500.3

Status: Completed

For further information...

CHSWC 1998-99 Annual Report: Projects and Studies Section

Profile of Division of Workers' Compensation (DWC) District Office Operations

Status: Completed

For further information...

CHSWC 1997-98 Annual Report: Program Oversight Section

CHSWC Roundtable on Division of Workers' Compensation (DWC) Lien Workload

Status: Completed

For further information...

CHSWC 1998-99 Annual Report: Projects and Studies Section

Information Needs

Benefit Notices Simplification Project

Status: In process

For further information...

See the project synopsis following.

CHSWC Report:

Project to Improve Laws and Regulations Governing Information for Workers (2000)

Navigating the California Workers' Compensation System: The Injured Workers' Experience (1996)

Website:

<http://www.dir.ca.gov/CHSWC/navigate/navigate.html>

Workers' Compensation Information Prototype Materials

Status: Completed

CHSWC Report:

Project to Augment, Evaluate, and Encourage Distribution of the Prototype Educational Materials for Workers (2000)

Workers' compensation Fact Sheets and a video:

"Introduction to Workers' Compensation" is available at www.dir.ca.gov/chswc

Addressing Legal Services Needs of Injured Workers

Status: In process

For further information...

See the project synopsis following.

Consolidating and Coordinating Information for Injured Workers

Status: English version completed. Spanish version completed.

CHSWC Report:

A Guidebook for Injured Workers (2002)

Website: <http://www.dir.ca.gov/CHSWC/CHSWCworkercompguidebook.pdf>

Workers' Compensation Medical Care in California Fact Sheets

Status: Completed

Website:

http://www.dir.ca.gov/chswc/CHSWC_WCFactSheets.htm

Workers' Compensation Carve-Out Guidebook

Status: Completed

CHSWC Report:

Carve-Outs: A Guidebook for Unions and Employers in Workers' Compensation (2004)

Website:

www.dir.ca.gov/CHSWC/CARVEOUTSGuidebook2004.doc

Medical Care

Medical Treatment Study

Status: In process

For further information...

See the project synopsis following.

CHSWC Study on Medical Treatment Protocols

Status: Completed

CHSWC Reports:

CHSWC Recommendations to DWC on Workers' Compensation Medical Treatment Guidelines (2004)

Working Paper: Evaluating Medical Treatment Guideline Sets for Injured Workers in California (RAND, 2004)

Working Paper: Evaluating Medical Treatment Guideline Sets for Injured Workers in California Executive Summary (RAND, 2004)

Websites:

http://www.dir.ca.gov/chswc/CHSWC_Med%20Treat_Nov2004.doc for CHSWC Recommendations.

http://www.dir.ca.gov/CHSWC/WR-203_111504cd_FINAL.pdf for full report

http://www.dir.ca.gov/CHSWC/WR-203_ExSum_111504cd_FINAL.pdf for executive summary.

Workers' Compensation Pharmaceutical Costs Study

Status: Completed

CHSWC Report:

Study of the Cost of Pharmaceuticals in Workers' Compensation (June 2000)

Website:

<http://www.dir.ca.gov/CHSWC/Pharmacy/pharmacover.html>

CHSWC Report:

Executive Summary of the Study of the Cost of Pharmaceuticals in Workers' Compensation (June 2000)

Website:

http://www.dir.ca.gov/chswc/CHSWC_WCFactSheets.htm

Inpatient Hospital Fee Schedule and Outpatient Surgery Study

Status: Completed

CHSWC Report:

Inpatient Hospital Fee Schedule and Outpatient Surgery Study (Gardner and Kominski, 2002)

Summary of Findings of the Inpatient Hospital Fee Schedule and Outpatient Surgery Study (2002)

Website:

<http://www.dir.ca.gov/CHSWC/HospitalFeeSchedule2002/HospfeeschedulePage1.html>

California Research Colloquium on Workers' Compensation Medical Benefit Delivery and Return to Work

Status: Summary of proceedings in process.

For further information...

See the project synopsis following.

Website

<http://www.dir.ca.gov/CHSWC/CAResearchColloquium/Colloquium.html>

American Medical Association Guides Training Conference

Status: Completed

For further information...

See the project synopsis following.

Medical Care (continued)

CHSWC Study on 24-four Hour Care

Status: Completed

For further information...

See the project synopsis following.

RAND Working Paper "Assessment of 24-Hour Care Options for California

Workers' Compensation Medical Billing Process

Status: Completed

For further information...

CHSWC Background Paper:

Background Information Workers' Compensation Medical Billing Process, Prepared for The Honorable Richard Alarcón, Chair, California Senate Committee on Labor and Industrial Relations" (2003)

Workers' Compensation Medical Payment Systems

Status: Completed

CHSWC Staff Report:

Workers' Compensation Medical Payment Systems: A Proposal for Simplification and Administrative Efficiency, *Prepared for The Honorable Richard Alarcón, Chair, California Senate Committee on Labor and Industrial Relations"* (2003)

CHSWC Report:

Adopting Medicare Fee Schedules: Considerations for the California Workers' Compensation Program (RAND, 2003)

Website:

http://www.dir.ca.gov/CHSWC/CHSWC_WCMedicalPaymentSystem/CHSWC_WCMedicalPaymentSystem.pdf

Worker Injury National Survey (WINS) Project

Status: In process

For further information...

See the project synopsis following.

Barriers to Occupational Injury and Illness Treatment and Prevention Services for Low-wage Workers in California

Status: In process

For further information...

See the project synopsis following.

CHSWC Study on Spinal Surgery Second Opinion Process

Status: In process

For further information...

See the project synopsis following.

State Disability Insurance Integration Project

Status: In process

For further information...

See the project synopsis following.

Community Concerns

Benefit Simulation Model

Status: Completed

For further information...

A CD with the "Workers' Compensation Benefit Simulation Model," as well as instructions for its use, is available for purchase from CHSWC.

Workers' Compensation and the California Economy

Status: Completed

CHSWC Report:

Update -- Workers' Compensation and the California Economy (2000)

Workers' Compensation and the California Economy (2000)

Website:

<http://www.dir.ca.gov/CHSWC/CalEconomy/CalEconomyCover.html> (2003)

Evaluation of Workers' Compensation Cost and Benefit Changes Since the Beginning of the 1989 and 1993 Reforms (*Special Study at the Request of the Legislature*)

Status: Completed

CHSWC Report:

Workers' Compensation Cost and Benefit Changes Since Beginning of Reform (1999)

Website:

<http://www.dir.ca.gov/CHSWC/Report.htm>

CHSWC Report:

Executive Summary Impact of the 1993 Reforms on Payments of Temporary and Permanent Disability (1999)

Website:

<http://www.dir.ca.gov/CHSWC/ExecutiveSummary.htm>

CHSWC Report:

Summary Estimating the Workers' Compensation Reform Impact on Employer Costs and Employee Benefits" (1999)

Website:

<http://www.dir.ca.gov/CHSWC/Summary.htm>

CHSWC 1998-99 Annual Report incorporates this report.

Workers' Compensation Anti-fraud Activities

Status: Completed

CHSWC Report:

Workers' Compensation Anti-Fraud Activities -- Report on the CHSWC Public Fact-Finding Hearing" (1997)

Website: <http://www.dir.ca.gov/CHSWC/Fraud/Fraudreport.html>

CHSWC Report:

Employers Illegally Uninsured for Workers' Compensation -- CHSWC Recommendations to Identify Them and Bring Them Into Compliance (1998)

Website: <http://www.dir.ca.gov/CHSWC/uefcover.html>

CHSWC Report:

Report on the Campaign Against Workers' Compensation Fraud (2000)

Website: <http://www.dir.ca.gov/CHSWC/Fraud/Fraudcover.html> (May 2000)

CHSWC Report:

Report on the Workers' Compensation Anti-Fraud' Program (2001)

Website: <http://www.dir.ca.gov/CHSWC/Finalfraudreport0801.html> (August 2001)

Attachments: <http://www.dir.ca.gov/CHSWC/WCSAntiFraudAttachment.html>

Community Concerns (continued)

Illegally Uninsured Employers Study

Status: Completed

CHSWC Report:

Employers Illegally Uninsured for Workers' Compensation – CHSWC Recommendations to Identify Them and Bring Them Into Compliance (1998)

Website:

<http://www.dir.ca.gov/CHSWC/uefcover.html> (December 1998)

State of the California Workers' Compensation Insurance Industry

Status: Ongoing

For further information...

See "Special Report – The California Workers' Compensation Insurance Industry" in this annual report.

CHSWC Background Paper:

State of the California Workers' Compensation Insurance Industry (2002)

Website:

<http://www.dir.ca.gov/CHSWC/StateInsuranceIndustry2002/Stateinsuranceindustry042002.html>

Study of Workers' Compensation Benefit Utilization

Status: Completed

For further information...

See the project synopsis following.

CHSWC Issue Papers

Study of Labor Code Section 132a

Status: Completed

CHSWC Background Paper:

Update on Labor Code Section 132a and Employer Termination of Health Insurance Coverage: Calif. Supreme Court Decision in *State of California, Dept of Rehab v. WCAB (Lauher)* (2003)

Website:

<http://www.dir.ca.gov/chswc/Lauher132aUpdate.doc> or

<http://www.dir.ca.gov/chswc/Lauher132aUpdate.pdf> (

Information on Industrial Medical Council's (IMC) Disciplinary Actions Taken on Qualified Medical Evaluators (QMEs)

Status: Completed

CHSWC Background Paper:

Recommendations for Improvement of the IMC's Protection of Injured Workers and Regulations of QMEs (July 2003)

Website:

http://www.dir.ca.gov/chswc/CHSWCReport_IMCDisciplinaryrevJuly2003.doc or

http://www.dir.ca.gov/chswc/CHSWCReport_IMCDisciplinaryrevJuly2003.pdf

CHSWC Issue Papers (continued)

School District Workers' Compensation Liability - Labor Code Section 3368

Status: In process

For further information...

See the project synopsis following.

CHSWC White Paper on Cost/Benefit of Implementing Electronic Deposit for Unemployment and Disability Benefits in the State of California

Status: Completed

For further information...

See the project synopsis following.

CHSWC Paper:

CHSWC White Paper on Cost/Benefit of Implementing Electronic Deposit for Unemployment and Disability Benefits in the State of California (2004)

Website:

http://www.dir.ca.gov/chswc/CHSWC_Accesstofunds.doc

California Insurance Guarantee Association (CIGA) Issue Paper

Status: In process

For further information...

See the project synopsis following.

Continuing and Upcoming Efforts

2002 Reform Mandates

Assembly Bill (AB) 749 requirements listed below are also discussed in the section "Special Report: Implementation of Workers' Compensation Reforms."

CHSWC is required to implement new programs as follows:

- CHSWC is now mandated to establish and maintain a Worker Safety and Health Training and Education Program (WOSHTEP) and a worker and employer Advisory Board for the program. The Advisory Board shall prepare an annual report evaluating the use and impact of the programs developed.
- CHSWC is mandated to establish and maintain coordination of insurance loss control services.
- CHSWC is required to study and advise on other subjects:
- CHSWC is to issue a periodic report and recommendations on the improvement and simplification of the workers' compensation benefit notices provided by insurers and self-insured employers to injured workers. A study of this is under way.
- CHSWC is to provide consultation to the Administrative Director (AD) of the Division of Workers' Compensation (DWC) on a study of medical treatment provided to industrially injured workers.
- CHSWC is to provide consultation to the AD of the DWC in the preparation of a Workers' Compensation Information Notice to be posted in the workplace.

CHSWC PROJECTS AND STUDIES

- CHSWC is to provide consultation to the AD of the DWC in the preparation of a Workers' Compensation Information Notice to be given to new employees.
- CHSWC and the Employment Development Department (EDD) are to assist the DWC in preparing a report with recommendations on how to provide better access to funds paid to injured workers, specifically to migratory and seasonal farm workers.
- CHSWC is to provide consultation to the AD of the DWC on the form and content of the notice and claim form, which are to be provided to the worker after injury.

2003 Reform Mandates

- The new CHSWC requirements listed below are also discussed in the section "Special Report: 2003 Workers' Compensation Reforms."
- CHSWC is required to conduct a survey and evaluation of evidence-based, peer-reviewed, nationally recognized standards of care, including existing medical treatment utilization standards, including independent medical review, as used in other states, at the national level, and in other medical benefit systems. [New Labor Code Section 77.5, established by Senate Bill (SB) 228]
- CHSWC shall issue a report of its findings and recommendations to the AD for purposes of the adoption of a medical treatment utilization schedule. The report shall be updated periodically. [Labor Code Section 77.5]
- CHSWC is required to study and report to the Legislature the feasibility of reinstating a minimum rate regulatory structure for the workers' compensation insurance market to be phased in over a five-year period. [Section 17(c) of AB 227]
- CHSWC is required to conduct a study of the spinal surgery second-opinion process. The study shall be completed by June 30, 2006. CHSWC shall issue a report concerning the findings of the study and recommendations for further legislation. [Section 48 of SB 228]

Ongoing Functions

CHSWC has ongoing oversight and evaluation functions, including:

- Impact of new legislation on:
 - Return to work.
 - Elimination of the presumption of correctness for treating physician reports.
- Workers' compensation benefits and costs.
- Implementation of provisions of the 2002 and 2003 reforms.

New and Continuing Research Focus

- Consistency of disability ratings.
- Occupational health and safety.
- Return to work.
- Medical benefit-delivery system.
- Comprehensive guide – information for injured workers.
- Monitoring costs and evaluation of benefits.

SYNOPSIS OF CURRENT CHSWC PROJECTS AND STUDIES

PERMANENT DISABILITY

This section starts with a discussion of the comprehensive evaluation of permanent disability (PD) by the Commission on Health and Safety and Worker's Compensation (CHSWC) and continues with descriptions of CHSWC's other ongoing studies.

Background

The most extensive and potentially far-reaching effort undertaken by CHSWC is the ongoing study of workers' compensation PD in California. Incorporating public fact-finding hearings and discussions with studies by RAND and other independent research organizations, the CHSWC project deals with major policy issues regarding the way that California workers are compensated for PD incurred on the job.

CHSWC realizes that the rating of PD is one of the most difficult tasks of the workers' compensation system, often leading to disputes and litigation.

The manner in which California rates and compensates injured workers for total disability (TD) and partial permanent disability (PPD) has enormous impact on the adequacy of injured workers' benefits, their ability to return to gainful employment, the smooth operation of the Division of Workers' Compensation (DWC) adjudication system, and the cost of the workers' compensation system to employers.

The project consists of two phases. The focus of the first phase of the evaluation is on measuring the long-term earnings losses and other outcomes for workers with PD claims. The second phase is intended to refine these measures and, at the same time, provide policy makers with suggestions for reforms intended to improve outcomes for injured workers at reasonable cost to employers.

CHSWC Blue-Ribbon Permanent Disability Policy Advisory Committee

Co-Chairs:

Tom Rankin, CHSWC and
California Labor Federation, AFL-CIO

John C. Wilson, CHSWC and
Schools Excess Liability Fund

Members:

Charles Bacchi
California Chamber of Commerce

Brian Hatch
California Professional Firefighters

Susan McKenzie, MD
DIR Industrial Medical Council

Theresa Muir
Southern California Edison

John Michael Nolan
California Workers' Compensation Institute

Dianne Oki
State Compensation Insurance Fund

Merle Rabine
Workers' Compensation Appeals Board

Larry Silver, Esq
California Applicants' Attorneys Association

Permanent Disability – Phase 1

Initial Wage Loss Study

The initial report from the CHSWC study of PD, “Compensating Permanent Workplace Injuries: A Study of the California System,” examines earnings losses and the replacement of earnings losses for workers with PPD claims at insured firms in California in 1991-92. The main findings of this report include:

- PPD claimants experienced large and sustained earnings losses over the five years following injury. These losses amounted to approximately 40 percent of the earnings these workers would have made if injury were avoided.
- Workers’ compensation benefits replaced only 40 percent of pre-tax earnings losses and only 50 percent of after-tax earnings losses.
- Losses are largely driven by lower employment rates among PPD claimants over the years following injury.
- Earnings losses and disability ratings are not closely related, particularly for low-rated claims. Replacement rates and the fraction of losses that remain uncompensated after benefits are paid were lowest for the lowest-rated claims.

For further information...



CHSWC Report: “Compensating Permanent Workplace Injuries: A Study of the California System” (RAND, 1998)



CHSWC Report: “Findings and Recommendations on California’s Permanent Partial Disability System-Executive Summary” (RAND, 1997)



Check out: <http://www.rand.org/publications/MR/MR919/>

Policy Advisory Committee

A CHSWC Permanent Disability Policy Advisory Committee was established to review the RAND report and the community’s responses and to recommend further action. The committee began meeting in November 1997 and continues to date.

Goals Established by the CHSWC Permanent Disability Policy Advisory Committee

- Efficiently decrease uncompensated wage loss for disabled workers in California.
- Increase the number of injured workers promptly returning to sustained work.
- Reduce transaction and friction costs, including costs to injured workers.

The CHSWC Policy Advisory Committee raised additional questions about the wage loss study and other areas of the RAND report.

The workers’ compensation community wanted additional information on how other factors, such as demographics and local economic conditions, affected the outcomes of the wage loss study. Observations were also made about the initial study parameters, as the study lacked data on employees of self-insured employers and data beyond the 1991-1993 period.

The PD Policy Advisory Committee urged the Commission to study those issues further. The Commission voted to continue the comprehensive evaluation of workers' compensation PD. Continuation of the evaluation of PD includes the following projects.

Enhancement of the Wage Loss Study to Include Self-insureds

Stakeholders objected to the first report, "Compensating Permanent Workplace Injuries: A Study of the California System," because they believed that self-insured employers, which account for one-third of claims in California, would have better outcomes for PPD claimants. Since self-insured employers are larger and higher-paying firms and since they directly bear the full cost of their workers' compensation claims, they should have more programs to encourage return to work and a more motivated workforce.

Private Self-insureds

The report entitled "Permanent Disability at Private, Self-Insured Firms" was released in April 2001. This report includes an unprecedented data collection effort on PD claims at self-insured firms in California. The findings of this report are:

- Better return to work at self-insured firms led to a lower proportion of earnings lost by PPD claimants. During the five years after injury, self-insured claimants lost a total of 23 percent of both pre- and post-tax earnings, compared to the insured claimants' proportional losses of about 32 percent.
- Since workers at self-insured firms have higher wages, they are more likely to have weekly wages that exceed the maximum temporary disability (TD) payment. Therefore, workers' compensation benefits replaced a smaller fraction of losses at self-insured firms. Workers at these self-insured firms experienced lower five-year wage replacement rates (48 percent) than workers at insured firms (53 percent).
- At both insured and self-insured firms, replacement rates were very low for workers with the lowest indemnity claims. At the self-insured and insured firms, claimants with total indemnity falling below the 20th percentile had 14 percent and 11 percent of their lost earnings replaced by benefits, respectively.
- PPD claimants with high pre-injury earnings and high indemnity claims experienced large dollar losses that were not compensated by benefits.

Status

Completed.

For further information...



CHSWC Report: "Permanent Disability, Private Self-Insured Firms" (RAND, 2001)
Check out: <http://www.rand.org/publications/MR/MR1268/>

CHSWC PD Project Self-Insured Advisory Subcommittee

Jill Dulich
Marriott International

Mary Garry
Hewlett Packard

Luisa Gomes
California Assn. of Service Organizations

Theresa Muir
Southern California Edison

CHSWC PD Project Self-Insured Project Team

Christine Baker
CHSWC

Frank Neuhauser
SRC, UC Berkeley

Robert T. Reville, PhD
RAND

Public Self-insureds

Although not part of the original proposal, but as a result of methodological and data difficulties associated with measuring replacement rates at public self-insured employers, a second report on earnings losses in this sector is planned, and this study component is ongoing. The report will include findings about the following topics:

- Earnings losses and replacement rates for public school teachers.
- Earnings losses and replacement rates for police officers and firefighters.
- Earnings losses and replacement rates for other public employees.
- An examination of Labor Code Section 4850. Is full wage replacement during temporary disability a good policy for workers in occupations that involve risk-taking? Does this policy improve public safety? Is this the approach used in other states?

Status

A draft report is completed and under peer review.

Impact of Local Economic Conditions on Wage Loss

In addition, stakeholders argued that 1991-92 was the beginning of California's recession and that during this period, workers would have been injured and returned to work in a declining economy. In response to their objections, an additional report was prepared.

CHSWC Permanent Disability Project Team

Christine Baker
CHSWC

Sue Polich
RAND

Seth Seabury
RAND

Frank Neuhauser
SRC, UC Berkeley

Robert T. Reville, PhD
RAND

David Studdert
RAND

Charles Lawrence Swezey
CHSWC Consultant

Lauren Sager Weinstein
RAND

Edward M. Welch
Michigan State University – Labor and
Industrial Relations

The report, *Trends in Earnings Loss from Disabling Workplace Injuries in California: The Role of Economic Conditions*, by Robert T. Reville, Robert F. Schoeni, and Craig W. Martin, confirms earlier findings that, despite some improvements in the mid-1990's, benefits in the state are lagging behind wages lost due to work injuries. For those injured workers who suffer from PPD, the replacement of lost wages over a 10-year period remains below one-half of earnings lost, which is well below the standard of two-thirds replacement invoked in evaluations of adequacy.

Key findings from the study include:

- The situation of disabled workers in California improved between 1991 and 1997. Their average benefits over five years after their injury increased as a percentage of their lost wages from 52 percent in 1991 to 58 percent by 1997. Although the improving economy had a slight effect on this

increase, two other factors were more significant: (1) the 1993 reforms to the state's workers' compensation system that raised benefits; and (2) the recognition by employers that they could control the costs of workers' compensation by increasing their use of return-to-work policies and rehiring more disabled workers.

CHSWC PROJECTS AND STUDIES

- Workers whose injuries were less severe showed the greatest gains in the replacement of lost wages during this period. They are also the easiest for employers to accommodate through return-to-work programs. In contrast, the most disabled claimants experienced no change in outcomes and may have even lost ground from 1991 to 1997.
- Although injured workers in the aggregate fared better in the mid-1990's, the study predicts that workers injured today are likely to be worse off than workers injured in the mid-1990's. Benefits have remained fixed in nominal terms since 1996 and have **actually declined in real terms due to inflation.**

Status

Completed.

For further information...

- 📖 CHSWC Report: "Trends in Earnings Loss from Disabling Workplace Injuries in California: The Role of Economic Conditions" (RAND, 2002)
- 📄 Check out: <http://www.rand.org/publications/MR/MR1457/>

Permanent Disability – Phase 2

The second phase of the project is intended to result in policy suggestions to improve PD compensation in California. Key questions are:

- First, since the PD rating system is so critical to the distribution of benefits and since many regard it as inconsistent and unreliable, how can the rating system be improved to increase both confidence in the system and outcomes for injured workers?
- Second, are the problems identified with PD common in other states, and if not, what do other states do to improve outcomes?
- Third, given that reduced employment is such a significant part of the losses of injured workers, how can post-injury employment for PPD claimants be improved?

The following project and others described in the upcoming "Return to Work" section of this report address these important questions.

Permanent Disability Rating Tool

This project will consist of a detailed evaluation of the disability rating schedule in order to provide empirical findings that can guide a revision that will be consistent with the economic losses experienced by permanently disabled workers.

As part of its research, the study will empirically identify the components of the schedule that contribute to inconsistency and make recommendations to reduce it. It will also analyze the usefulness of increased reliance on objective medical findings in disability ratings, including the extent to which such an approach can improve consistency and whether it can also improve the targeting of benefits.

An interim report on improving disability ratings in California was released in December 2003. The final report, expected in 2005, will provide information on the following:

- Detailed information on earnings losses for workers with precisely defined particular injuries. This information will be used to construct a ranking of injuries by severity where severity is defined by five-year earnings losses.
- A comparison of a ranking of injuries by earnings losses with a ranking by California disability ratings.
- Ways to enhance the information used to construct disability ratings in order to improve the consistency of ratings, developed with input from occupational medicine experts.
- An evaluation of the use of work restrictions and of subjective reports of pain in the current disability rating system.
- A review of and comparison with other approaches used to compensate permanent disability (PD), including ranking by non-economic losses or the American Medical Association (AMA) Guides.

Next Steps

The revised PD rating schedule provided for by Senate Bill (SB) 899 requires injury descriptions to be based on the AMA Guides. The disability descriptions in the California Permanent Disability Rating System and the AMA Guides are very different.

The next step in implementing the revised permanent disability (PD) schedule will be the development of a system to link the injuries in the California Disability Evaluation Unit (DEU) data used by RAND to the AMA Guides injury descriptions.

For further information...



CHSWC Report: "The Evaluation of California's Permanent Disability Rating Schedule" (RAND, 2003)



Check out: <http://www.rand.org/publications/DB/DB443/index.html>

Return to Work

Analysis of Wage Loss and Return to Work in Other States

The study entitled “Earnings Losses and Compensation for Permanent Disability in California and Four Other States” is part of an ongoing evaluation of workers' compensation permanent partial disability (PPD) system in California that CHSWC began in 1996. The study examines the losses experienced by workers with permanent disability (PD) and return-to-work (RTW) rates in New Mexico, Washington, Wisconsin, Oregon and California, and compares the adequacy of compensation received from the states' workers' compensation systems.

Findings

- California's PPD system, when compared to the other states mentioned above, had the highest losses, highest average benefits paid, and lowest RTW rates.
- Despite increases in benefits under the recent workers' compensation legislation Assembly Bill (AB) 749, the study projects that California's replacement rate is lower than three of the four comparison states studied.
- In looking at the replacement rates, after AB 749, California regained ground lost to inflation (benefits were not indexed to the State average weekly wage in California as in other states), but did not gain relative to other states.
- The researchers concluded that California is heading in the right direction through its AB 749 mandate which directs the Administrative Director (AD) to implement an RTW program focused on subsidies to employers for modified work or ergonomic changes.
- The researchers recommended that California could consider moving to a two-tier benefit system, which pays higher benefits for people who have not been offered jobs at all or suitable jobs with the pre-injury employer.
- The researchers noted that no states in the study had “adequate” benefits to replace two-thirds of lost wages.

Return To Work in Other States Project Team

Christine Baker
CHSWC

Jeff Biddle
RAND

Leslie I. Boden, PhD
Boston University – Public Health

Chris Mardesich
RAND

Robert T. Reville, PhD
RAND

Status

The final report is expected to be issued in 2005.

Return to Work

Best Practices Encouraging Return to Work

Background

Many firms in California have adopted practices to improve return to work (RTW) of injured employees. Policy makers may wish to encourage increased emphasis on RTW as a means to reduce uncompensated wage loss.

Return-to-Work Best Practices Project Team

Christine Baker
CHSWC

Tricia Johnson
RAND

Niklas Krause, MD, PhD
UC San Francisco

Irina Nemirovsky
CHSWC

Frank Neuhauser
SRC, UC Berkeley

Robert T. Reville, PhD
RAND

David Studdert
RAND

Lauren Sager Weinstein
RAND

Edward M. Welch
*Michigan State University – Labor
and Industrial Relations*

Description

This project collected data on the RTW practices of California firms and examined their effectiveness. Since there is significant overlap between this study and the CHSWC Vocational Rehabilitation Study, RAND requested that the two studies be combined.

The report will cover the following topics:

- Valuing RTW. How much better are replacement rates for workers who return to the at-injury employer? How often do workers who return to the at-injury employer continue to work at that employer? How severe are wage losses for workers who return to work at other employers?
- Description of RTW practices of self-insured employers: what works?
- RTW policies and regulations in other states.
- Vocational rehabilitation in California. Does it improve outcomes? Is it worth the cost?

Objectives

The objectives of this project are to:

- Provide information on the most effective RTW practices of California employers. This information is intended to assist employers and employees to determine which RTW practices may be applicable to their needs.
- Measure the impact of the reform changes on the vocational rehabilitation program and make available comparative data in future years regarding the number of workers undergoing vocational rehabilitation, the duration and costs of rehabilitation programs and services, and the results produced by those programs and services.

Findings

Preliminary findings indicate that the cost of the vocational rehabilitation benefit declined by \$274 million (49 percent) between 1993 and 1994.

The decline in average cost per vocational rehabilitation claim appears to be equally dramatic, dropping 40 percent from about \$14,200 in 1993 to \$8,600 in 1994. This downward trend appears to be continuing with 1995 costs declining an additional 10 percent.

Recent results indicate that the reform efforts apparently achieved one major goal, to encourage more employers to offer modified or alternative work and to pay these workers at or near their pre-injury wage. Offers of modified or alternative work increased by 50 percent to include nearly one-third of qualified injured workers. At the same time, nearly 80 percent of these workers received wages that were at least 85 percent of the pre-injury level, and nearly 60 percent received wages equal to or greater than the pre-injury level.

The costs of the rehabilitation benefit declined dramatically as a result of reform. At the same time, outcomes for qualified injured workers, as measured by work status and several income measures, are virtually identical despite this decrease in overall benefit costs.

The study also found that most firms have formal RTW programs; such programs emphasize early contact of employees which may reduce disability; many of the programs emphasize communication of policies to the treating physicians; and the most frequent transitional strategy to return the injured worker back to the workplace is to modify work tasks. Another preliminary finding is that worker participation in a formal RTW program decreases a worker's wage loss on average by \$1,500 in the year after injury.

Status

The CHSWC Vocational Rehabilitation Study outcomes have been merged into the CHSWC Return-to-Work Study being conducted by RAND.

Workers' Compensation Reforms

Medical-legal Study

Background

Reform legislation changes to medical-legal evaluations were intended to reduce both the cost and the frequency of litigation, which drive up the price of workers' compensation insurance to employers and lead to long delays in case resolution and the delivery of benefits to injured workers.

In 1995, the Commission on Health and Safety and Workers' Compensation (CHSWC) initiated a project to determine the impact of the workers' compensation reform legislation on workers' compensation medical-legal evaluations. CHSWC contracted with the Survey Research Center (SRC) at UC Berkeley to carry out this study.

Medical-legal Project Advisory Committee

David Bellusci
WCIRB

Larry Law
WCIRB

Karen Yifru
WCIRB

Medical-legal Project Team

Frank Neuhauser
SRC, UC Berkeley

Description

The study analysis is based upon the Permanent Disability Claim Survey, a set of data created each year by the Workers' Compensation Insurance Rating Bureau (WCIRB) at the request of the Legislature to evaluate the 1989 reforms. WCIRB data summarizes accident claim activity, including such measures as degree of impairment, the type and cost of specialty examinations, whether the case was settled and, if so, the method of settlement employed.

Findings

The study determined that a substantial decline in total medical-legal costs occurred during the 1990's. This decline can be attributed to several factors:

- Almost half (47 percent) of the cost savings is due to improvements in the medical-legal process that reduced the number of examinations performed per claim.
- Eighteen percent of the improvement is due to changes to the medical-legal fee schedule and treatment of psychiatric claims that reduced the average cost of examinations per claim.
- Thirty-five percent of the improvement is a result of the overall decline in the frequency of reported PPD claims.

Status

The medical-legal study was initiated in 1995 and is ongoing.

Workers' Compensation Reforms

Update of Treating Physician Presumption Study

Background

Before 1993, whenever a medical issue arose in a worker's compensation case, many medical reports were involved in the resolution. In addition to the reports of the treating physician, the applicant and the defendant were each entitled to procure a medical-legal evaluation and report in each appropriate medical specialty.

The 1993 legislative reforms of the workers' compensation system made a number of significant changes to the medical-legal reporting process. The primary treating physician is required to render opinions on all medical issues to determine the injured worker's eligibility for compensation. When additional medical reports are obtained on a worker's industrial injury, the findings of the treating physician are presumed to be correct.

In 1996, the WCAB issued an en banc decision, *Minniear v. Mt. San Antonio Community College District* 61CCC 1055 CWCR 261, which had the effect of extending the treating physician presumption to disputes over medical treatment as well as medical-legal issues.

Description

This project evaluates the quality of treating physician reports and the cost-benefit of the presumption of correctness of treating physician reports.

Findings

Results of the study include the following:

- Changes to the status of the treating physician made during the 1993 reforms have resulted in medical-legal decisions based on reports of poor quality without apparent cost savings.
- There seems to be consensus within the Workers' Compensation Appeals Board (WCAB) that the presumption has increased litigation and curtailed the discretion of the workers' compensation judges to craft reasonable decisions within the range of evidence.

Findings from the update study indicate that *Minniear* had an important impact on the cost of medical treatment and the utilization of medical services. In summary:

- Before the *Minniear* decision, when the worker controlled medical treatment, the cost in any quarter was 7.8 percent higher than when the insurer/employer controlled the choice of physician.

Treating Physician Presumption Review Committee

Henry E. Brady
UC Berkeley

Dave Bellusci
WCIRB

James Gebhard
Farmers Insurance

Steve Raphael
UC Berkeley

Robert Reville, PhD
RAND

Jason Seligman
UC Berkeley

Alex Swedlow
CWCI

Rick Victor
WCRI

WCIRB Special Committee on AB 749

CHSWC PROJECTS AND STUDIES





- The *Minniear* decision had the effect of increasing this difference in average quarterly treatment costs when the worker controls the physician by an additional 11.3 percent.
- Service utilization was 10.4 percent higher in any quarter when the worker controlled the physician. *Minniear* increased this difference by an additional 7.7 percent.

The CHSWC study estimates that eliminating the treating physician presumption would save \$370 to \$820 million in medical costs starting in 2003.

Status

Completed. The initial study was completed in 1999. In 2001, at the request of Senator Patrick Johnston's office, CHSWC began the process of updating the information regarding the impact of the presumption of correctness of the treating physician, and a final report was issued in 2002.

For further information...

-  CHSWC Report: "Report on the Quality of the Treating Physician Reports and the Cost-Benefit of Presumption in Favor of the Treating Physician" (1999)
-  Check out: <http://www.dir.ca.gov/CHSWC/Report99/TPHYCover.htm>
-  CHSWC Report: "Doctors and Courts: Do Legal Decisions Affect Medical Treatment Practice?" (2002)
-  Check out: <http://www.dir.ca.gov/chswc/CHSWCLegalDecAffectMedTreatPractice/ptpfinalrpt.html>

Court Technology Project

Background

The Commission on Health and Safety and Workers' Compensation (CHSWC) RAND Judicial Study, CHSWC staff, and the Division of Workers' Compensation (DWC) staff have identified several problems with the current court system of DWC. These problems include a paper-driven system, which overburdens clerical staff, a lack of integration of antiquated computer systems with high file-storage costs, and difficulty in accessing information.

At the July 2002 Commission Strategic Planning Meeting, former Administrative Director (AD) Richard Gannon indicated that in order to have an efficient court management system, a feasibility study needs to be initiated shortly to obtain an improved technological system.

Former AD Gannon requested assistance in a court technology effort at the July and November 2002 Commission meetings. The Commission asked CHSWC staff to investigate and determine the cost and scope for the DWC to implement a comprehensive integrated court technology system.

Description

A joint task force consisting of internal staff from CHSWC and the DWC examined the steps that were needed to develop a comprehensive integrated system.

Thus far, the task force has:

- Conducted court site visits.

The California Southern Bankruptcy Court (CSBC). The CSBC, which serves San Diego and Imperial County, has implemented an on-line system, the Court Management: Electronic Court Filing (CM/ECF) system, in phases starting in 1998. At the present time, only attorneys and trustees are permitted to utilize the CM/ECF.

New York. Representatives from CHSWC and the DWC met with New York Workers' Compensation Board (WCB) officials in Albany to learn more about the development and operation of their Electronic Case Folder (ECF) project, which included a dramatic overhaul of WCB procedures, organization, and practices. ECF is an integral part of the overall Organization, Process & Technology Innovations in Customer Service (OPTICS) Program.

- Conducted telephone surveys of technology improvements.

CHSWC has conducted a survey of different states, including Texas, Maryland, Pennsylvania, and Florida, to understand what information technology systems they have implemented. Many of the states are in the process of or have switched to an electronic case management system, which includes imaging documents coming through the system and electronic filing of petitions.

Court Technology Project Team

Christine Baker
CHSWC

Jack Chu
DIR, Information Systems

Jim Culbeaux
DIR, Information Systems

Robert Kutz
DWC

Brooke Nagle
CHSWC

Irina Nemirovsky
CHSWC

Manny Ortiz
DIR, Information Systems

Ken Peterson
DWC

Glen Shor
DWC

Steve Siemers
DWC

Kirsten Strömberg
CHSWC

Arthur Tunik
DIR, Information Systems

Findings

A Feasibility Study Report (FSR) was prepared by the Gartner Group in July 2003.

The FSR proposed an integrated Electronic Adjudication Management System (EAMS) which will eventually replace the current WCAB On-line, Vocational Rehabilitation, Disability Evaluations Unit and Uninsured Employers' Fund (UEF) Claims Management systems with a Commercial Off-the-Shelf (COTS) case management, calendaring, document management, and cashiering solution. Also critical to the proposed system is the development of an enterprise relational database system that will combine data elements of the three primary systems, as well as add other data elements that will benefit DWC and other divisions within the Department of Industrial Relations (DIR).

In addition, the proposed system will integrate with other existing systems, such as the Workers' Compensation Information System (WCIS) and AristoCAT court reporting software, in addition to supplementing DWC's call center to drastically improve DWC's overall business intelligence and customer services capabilities. The solution provides the best value to DWC/Workers' Compensation Appeals Board (WCAB) and the State by a cost-effective way of meeting the business and technical requirements specified in the FSR.

Electronic Adjudication Management System

Key components of the proposed system include:

- COTS case management, calendaring, and cashiering system.
- COTS document management system.
- Upgrade of existing equipment to support new functionality.
- Migration of the DEU system to a modern platform.
- Division-wide relational database system with integration to WCIS.
- Integration of AristoCAT court reporting technologies into core business system.
- COTS reporting software tool.
- Claims management software.

Integrating robust COTS solutions with existing technology investments will provide the following benefits:

- Meet the technical and functional requirements, as well as the project objectives of DWC.
- Provide a cost-effective and industry-standard approach to managing and improving paper-based processes.
- Provide vendor support and ongoing maintenance terms and conditions mitigating technological risk.
- Leverage current technology investments and feed information to WCIS in support of DWC business intelligence goals.
- Enable call center staff to be more effective and to field more calls that will not have to be routed to district offices.
- Improve customer service capability and the ability to exchange data with external stakeholders.
- Improve overall business intelligence and operational performance-reporting capabilities.

Status

The Department of Finance completed its review of the DIR FSR for the Electronic Adjudication Management System project and approved the funding for the project.

Occupational Health and Safety

Worker Occupational Safety and Health Training and Education Program (WOSHTEP)

Background

Labor Code Section 6354.7 establishes a Worker Occupational Safety and Health Education Fund for the purpose of establishing and maintaining a statewide worker-training program. The Commission on Health and Safety and Workers' Compensation (CHSWC) is instructed to develop a program that raises awareness and promotes injury and illness prevention and to deliver this training through a statewide network of providers. This program is designed to prepare workers in California to take a leadership role in health and safety programs at work.

Description

CHSWC has taken the following steps to design and launch this program:

- ***Prepared a Survey of State, National and International Worker Health and Safety Training Programs.*** This Survey includes websites and descriptions of available programs and lists courses for each program. The Survey can be found as a link on CHSWC's website. The Survey provides necessary information in development of the WOSHTEP program as it helps to avoid duplication of efforts and allows CHSWC to focus on areas where there are gaps in service and where there is an actual need. Placing the Survey on CHSWC's website assists workers and employers in locating training programs. Finally, it helps to meet CHSWC's mandate under Section 77(a) of the California Labor Code to "examine other states' workers' compensation programs and activities to prevent industrial injuries and occupational diseases."
- ***Conducted needs assessments with stakeholders which will continue on an ongoing basis.*** This includes workers and their representatives, employers, insurers, community-based organizations serving hard-to-reach workers, and potential training providers. This assists CHSWC in reaching a consensus on defining a "core curriculum addressing competencies for effective participation in workplace injury and illness prevention programs and on joint-labor management health and safety committees." It also helps to identify additional training needs for high hazard industries, significant hazards, and/or occupational groups with special needs.
- ***Designed a core curriculum*** and supplemental training materials based on the results of the needs assessment. The curriculum is aimed primarily at "workers who are able to train other workers and workers who have significant health and safety responsibilities, such as those serving on a health and safety committee or serving as a designated

Worker Occupational Safety and Health Training and Education Program Planning Committee

Christine Baker
CHSWC

Brooke Nagle
CHSWC

Selma Meyerowitz
CHSWC

Robin Baker
UCB – Labor Occupational Health Program (LOHP)

Laurie Kominski
UCLA - Labor Occupational Safety and Health (LOSH) Program

Betty Szudy
UCB – Labor Occupational Health Program (LOHP)

Laura Stock
UCB – Labor Occupational Health Program (LOHP)

Stacey Triplett
UCLA - Labor Occupational Safety and Health (LOSH) Program

CHSWC PROJECTS AND STUDIES


safety representative.” CHSWC is currently exploring the feasibility of creating a certification system for those who successfully complete the core curriculum.

- **Implemented pilot programs** in specific industries and/or regions to demonstrate the effectiveness of the training program. Four pilots were conducted in northern and southern California, which were targeted to address non-English speaking audiences, industries with significant injuries, small businesses, workers who are able to train other workers and traditionally underserved populations. These pilots cover a range of industries and regions (for example, homecare workers in northern California, manufacturing in southern California, and open enrollment to workers in various industries).
- **Established an evaluation plan** to measure the effectiveness of the pilot programs and subsequent training efforts. CHSWC has contracted with San Francisco State University to evaluate the pilots and prepare an evaluation plan.
- **Established resource libraries** that house and distribute training materials. These resource libraries have been established and are located at the Labor Occupational Safety and Health (LOSH) Program at UCLA and at the Labor Occupational Health Program (LOHP) at UC Berkeley.
- **Prepared a Multilingual Health and Safety Resource Guide to Worker Training Materials on the Web** by LOHP for WOSHTEP. This Guide is a collection of worker training materials, such as fact sheets, checklists and other educational resources that are available on-line and can be printed to distribute to workers participating in workplace injury and illness prevention programs.
- **Created a labor-management Advisory Board** to oversee program activities. An advisory board has been convened and meets semi-annually. The WOSHTEP Advisory Board consists of employers and workers who are motivated to assist CHSWC in guiding development of curricula, teaching methods, and specific course material about occupational safety and health. The Advisory Board also assists in providing links to the target audience and broadens partnerships with worker-based organizations, labor studies programs, employers and others that are able to reach the target audience.

Next Steps

CHSWC has assessed fees to California workers' compensation insurance carriers pursuant to Labor Code Section 6354.7 for the 2004-05 fiscal year. These fees are intended for use in further funding of this program. Next steps include: conducting additional training courses, finalizing the core curriculum, completing an evaluation of the pilots, developing a training-of-trainers curriculum and establishing a network of trainers.

For further information...

 CHSWC Report: "Workplace Health and Safety Worker Training Materials: An Electronic Multilingual Resource List" (LOHP, 2003)

 Check out: <http://www.dir.ca.gov/CHSWC/WOSHTEP.html>

Cross-state Comparison of Occupational Injury Rates and Time to Return to Work

Background

Assembly Bill (AB) 749 added Labor Code Section 6354.7 requiring the Commission on Health and Safety and Workers' Compensation (CHSWC) to establish and maintain development of training programs for high hazard industries and significant hazards. In response to the above mandate, CHSWC is developing a research study which would provide an assessment of injuries and illnesses in the state of California, as well as compare California to other states. hazards.

Cross-state Comparison of Occupational Injury Rates and Time to Return to Work

Christine Baker
CHSWC

Frank Neuhauser
UC Berkeley

Description

The study would include in particular an identification of high-risk industries and occupations, including those with high injury and illness rates, and those in which employees are exposed to one or more hazardous substances, or where there is a demonstrated need for research to determine effective strategies for the prevention of occupational illnesses or injuries.

The project would measure occupational safety and health performance and identify areas, such as industries or causes of injury, where there is substantial opportunity to improve the safety of the workplace through education and training.

Status

Ongoing.

Occupational Health and Safety

California Partnership for Young Worker Health and Safety

Background

Every year, about 70 adolescents die from work injuries in the United States, and approximately 70,000 are injured severely enough to require treatment in hospital emergency rooms. Most of these injuries are preventable.

Description

The Commission on Health and Safety and Workers' Compensation (CHSWC) has put California in the position of a national leader in protecting and educating teen workers. Over the past several years, CHSWC has sponsored and convened both the California Partnership for Young Worker Health and Safety and the California Resource Network for Young Worker Health and Safety, established by Assembly Bill (AB) 1599 in September 2000. These efforts, in addition to serving California, have inspired similar activity throughout the United States.

The California Partnership for Young Worker Health and Safety is composed of groups and individuals dealing with youth employment and education issues, as well as others who can play a role in educating and protecting young workers. Members represent educators, parents, employers, youth training programs, governmental agencies and others.

The purpose of the Partnership is to identify potential strategies to:

- Reduce work-related injuries and illnesses among youth in the California workforce.
- Foster awareness and skills in safety and health that will remain with youth throughout their working lives and allow them to take an active role in shaping safe work environments.
- Promote positive, healthy employment for youth.

Status

During the past year, the Partnership has continued to meet three times each year to develop and implement the following strategies in key areas:

- **Review and update the Partnership's 1998 recommendations.** As part of this process, 20 Partnership members and 55 community members representing teachers, employers, job trainers and youth attended a daylong working symposium on March 24, 2004. At this symposium, *Young Workers at Risk: Planning for Action*, participants discussed new and existing recommendations and suggested priorities. Revised recommendations were released in September 2004 and will form the basis of the Partnership's work plan for the next several years.

Young Worker Health & Safety Project Team

Christine Baker
CHSWC

Robin Baker
LOHP, UC Berkeley*

Diane Bush
LOHP, UC Berkeley*

Donna Iverson
LOHP, UC Berkeley*

Brooke Nagle
CHSWC

Selma Meyerowitz
CHSWC

Irina Nemirovsky
CHSWC

Janice R. Yapdiangco
CHSWC

CHSWC PROJECTS AND STUDIES

- **Expand the membership of the Partnership, especially to include greater representation from employers and youth.** For the March 24th symposium, a partnership was formed with the California Center for Civic Participation and Youth Development to recruit and train 15 youth delegates to participate actively in the daylong symposium. Recommendations for effective youth participation in Partnership and Resource Network activities were included in the new recommendations released in September 2004.
- **Separate funding was identified to initiate a pilot project to develop health and safety training materials for restaurant owners** in partnership with the State Compensation Insurance Fund (SCIF) and Cal/OSHA Consultation. The pilot training workshop was held in October 2004.
- **Promote the sixth annual Safe Jobs for Youth Month public awareness campaign,** which was established by former Governor Davis' proclamation starting in 1999. This year's public awareness and education activities have included a teen poster contest, a student journalism contest, distribution of a resource kit to over 600 educators and community groups, a photo and poster exhibit in Los Angeles's City Hall, and a media campaign.
- **Make presentations at several prominent national meetings** highlighting the cutting edge approaches to protecting young workers being taken in California.
- **Provide oversight and direction of the Resource Network for Young Worker Health and Safety.**

California Partnership for Young Workers' Health and Safety

V. Toni Adams
Alameda County Office of Education

Gordon Allman
*California Teachers Association**

Joseph Bowden
ABC Unified School District

Ellen Braff-Guajardo
*California Rural Legal Assistance, Inc.**

Yvette Brittain
State Compensation Insurance Fund

Peggy Bullock
*CA Assoc. of Work Experience Educators**

Lu Calkins
*CA Assoc. of Work Experience Educators**

William Callahan
California Department of Education

Rupali Das
California Department of Health Services

Carol Frischman
*LOSH, UCLA**

Fred Glass
*California Federation of Teachers**

Greg Heguiagaray
Elk Grove Unified School District

Jonathan Hughes
UFCW Local 428

Pat Klotz
California State PTA

Chandra Larsen
*New Ways to Work**

David Lawrence
Calif. Ctr. for Childhood Injury Prevention

* Indicates a Resource Network Member
(continued on next page)

Young Worker Resource Network

The California Resource Network for Young Worker Health and Safety continues to be a major effort. The Resource Network provides coordinated outreach and information services to and on behalf of existing programs that those programs cannot provide efficiently due to fiscal constraints and economies of scale.

Over the past year, the Resource Network members, made up of nine organizations with direct access to teachers, employers, and youth, jointly reached and served hundreds of thousands of organizations and individuals throughout California with important health and safety information. Information and training are offered in both English and Spanish.

Resource network accomplishments include:

- More than 1,600 teachers, employers and youth received direct training.
- Approximately 13,000 teachers, employers and youth received written information, such as the fact sheets for teens and for employers or the Safe Jobs for Youth Month Resource kit produced by the University of California Berkeley Labor Occupational Health Program (LOHP).
- Seventy-five teachers, employers and youth received direct technical assistance via phone or via the www.youngworkers.org website.
- The average number of “hits” per day on the Network’s www.youngworkers.org website has increased by 60 percent since last year, for a total of 85,000 hits during the past year.
- At least 25 newsletter and newspaper articles were published.

More importantly, health and safety information continues to be integrated into ongoing state-wide activities of many of the Network partners, including regular in-service training for work-experience and WorkAbility educators, widespread use of Network curricula in job training and work-experience programs, and extensive organizational links to the new www.youngworkers.org website.

In the coming year, priorities are to:

- Continue to strengthen the resource network, with a focus on outreach and information tools for the employer community.
- Expand the membership of the Partnership, to include greater representation from employers and youth organizations.
- Continue to share the California model and assist other states to replicate this model.

For further information...



CHSWC Report: “Protecting and Educating California’s Young Workers – Report of the California Study Group on Young Worker Health and Safety” (1998)



Check out: www.youngworkers.org for the California Young Worker Resource Network, providing information for teens, teen workers in agriculture, employers, parents, and educators.

California Partnership for Young Workers’ Health and Safety (continued)

Aldon Manard
*Workability Program**

Rubin Mayorga
U.S. Department of Labor

Rick Mejia
California Dept. of Education

Henry Nunn
DIR DAS

John Pierson
*CAWEE**

Ed Rendon
Teamsters Joint Council 42

Kristy Schultz
Cal/OSHA

Nance Steffan
DIR DLSE

Linda Tubach
*California Federation of Teachers**

Al Tweltridge
California Dept. of Education

Rolene Walker
U.S. Department of Labor

Mike Wilbur
*California Workforce Association**

* Indicates a Resource Network Member

Occupational Health and Safety

Photography Exhibit and Teen Workshops

Each year, the governor makes a declaration that annually, the month of May commemorates Safe Jobs for Youth Month. In recognition of this, the Commission on Health and Safety and Workers' Compensation (CHSWC) brought photography and poster exhibitions to San Francisco City Hall from May 7 through July 6, 2003, and to Los Angeles City Hall from May 17 through June 25, 2004. The exhibits highlighted child labor issues by showing historical photographs of Lewis Wickes Hine and winners of the annual Safe Jobs for Youth Month teen poster competition.

The San Francisco event was co-sponsored with CHSWC, the Department of Industrial Relations (DIR), the State Compensation Insurance Fund (SCIF), the University of California at Berkeley, Labor Occupational Health Program (LOHP), and Brenton Safety, along with the San Francisco Arts Commission. This event also included modern photographs of teens working in New York City by photographer Rebecca Letz.

The Los Angeles event was co-sponsored by CHSWC, UCLA's Labor Occupational Safety and Health (LOSH) Program, the Center for Occupational Environmental Health (COEH), SCIF, Los Angeles City Councilwoman Wendy Greuel, the Los Angeles City Attorney's Office, Los Angeles Cultural Affairs Department, and the California Wellness Foundation. Youth involvement was drawn from the Cesar Chavez Foundation, Constitutional Rights Foundation, the Los Angeles Unified School District (LAUSD) District B and UCLA. Community partners included the California Regional Environmental Community-L.A. Region, Facing History & Ourselves-L.A. Region, LAUSD Service Learning Task Force, LAUSD School Board member Marlene Canter, LAUSD Work Experience Office and Skirball Cultural Center.

Lewis Wickes Hine's (American, 1874-1940) work is a traveling exhibition organized by The International Museum of Photography at George Eastman House in Rochester, New York. The exhibit is entitled, "Let Children Be Children, Lewis Wickes Hine's Crusade Against Child Labor."

Hine was a sociologist/photographer hired by the National Child Labor Committee (NCLC) from 1906 to 1912 to document the harsh conditions of child labor in the United States. Hine photographed children working in agricultural fields, manufacturing plants, canneries, mills, coalmines and sweatshops, and selling newspapers. Hine's photographs illustrated that children were subjected to conditions that damaged their health and deprived them of an education and a future. The exhibition is a telling look of the industrialization of America and the appalling circumstances endured by poor, working-class children until legislation against child labor prevailed in 1938.

Los Angeles Exhibit and Workshop Planning Committee

Christine Baker
Brooke Nagle
CHSWC

Carol Frischman
Laurie Kominski
UCLA - Labor Occupational Safety and Health (LOSH) Program

Susan Gard
DIR

Cherylin Leong
California Regional Environmental Community-L.A. Region

Denice Cantillon
LAUSD District B

Eftihia Danellis
Facing History & Ourselves-L.A. Region

Katie Moore
Constitutional Rights Foundation

Tim Johnston
LAUSD Service Learning Task Force

CHSWC PROJECTS AND STUDIES

In San Francisco, in addition to presenting the exhibit, CHSWC and sponsors welcomed students from local high schools to attend a workshop on safe jobs for youth and tour the exhibit. Participating schools included Galileo High School in San Francisco, Oakland High School and work-experience classes from several high schools in the Contra Costa Unified School District. Over 250 students attended workshops and viewed the exhibit.

In Los Angeles, the exhibit provided an excellent service-learning opportunity for students in the LAUSD to connect what they learned in the classroom with past and present issues on child labor and workplace health and safety. The exhibit included a youth voice in the planning and conducting of activities surrounding the Lewis Hine event.

Next Steps

CHSWC looks forward to working again with our partners in 2005 to educate youth and the public on historical child labor and current young worker issues.

Los Angeles Exhibit and Workshop Participants

UCLA - Labor Occupational Safety and Health Program (LOSH)

Carol Frischman, Youth Project Director
Cass Ben-Levi, Communications Director

The Center for Occupational Environmental Health (COEH)

Dr. John Froines

State Compensation Insurance Fund (SCIF)

Lauren Mayfield, Mgr, Safety and Health Services
Yvette Brittain, Sr. IH Consultant

Los Angeles City Councilwoman Wendy Greuel's office

Wendy Greuel, City Councilwoman
Claire Bartels, Chief of Staff
Patty Wilson, Deputy for Special Events
Tracy Chavarria, Office Manager

Los Angeles City Attorney's Office

Rockard J. Delgadillo

Los Angeles Cultural Affairs Department

Scott Canty, Art Curator

California Wellness Foundation

Fatima Angeles, Program Director

Cesar Chavez Foundation

Julie Chavez Rodriguez

Constitutional Rights Foundation

Katie Moore
Ben Cone

Los Angeles Exhibit and Workshop Participants (Cont.)

LAUSD Service Learning Task Force

Tim Johnston
Bud Jacobs

LAUSD School Board Member

Marlene Canter

LAUSD Division of Special Education

James Ratay
Sharyn Miller

LAUSD Work Experience Office

Nick W. Nicoletti
Monica Studer

Skirball Cultural Center

Susan Josepher

George Eastman House, Rochester, N.Y.

Jeanne Verhulst

Students and Teachers from

Manual Arts High School
San Fernando High School
Bishop Alemany High School
University High School

***San Francisco Exhibit and Workshop
Sponsors***

**The California Labor and Workforce
Development Agency**

Department of Industrial Relations

**Commission on Health and Safety and Workers'
Compensation**

Tom Rankin, Chair

Christine Baker, Executive Officer

State Compensation Insurance Fund

Lauren Mayfield, Manager, Safety and Health
Services

Yvette Brittain, MPH, CIH, CSP, Senior Industrial
Hygiene Consultant

**Labor Occupational Health Program, University
of California at Berkeley**

Robin Baker, Director

Diane Bush, Coordinator of Public Programs

Brenton Safety

Nate Russell

San Francisco Arts Commission Gallery

Rupert Jenkins, Gallery Director

Sharon Spain, Slide Registry Manager

**State Building and Construction Trades Council
of California**

Bob Balgenorth, President

**International Brotherhood of Electrical Workers,
Local 332, San Jose**

Gerald Pfeiffer, President

Terry Tanner, Business Manager

**San Francisco Hotel/Restaurant
Labor/Management Education Fund**

Joan Ortega, Director

**Culinary Arts & Hospitality Studies Department,
City College of San Francisco**

Edward Hamilton, Department Head

Lincoln Crow, Strategic Communications

George Eastman House, Rochester, N.Y.

Jeanne Verhulst

Information Needs

Carve-Outs: A Guidebook for Unions and Employers

Background

California has an exciting opportunity to serve as a national leader in the areas of worker protection, benefits, and reduced costs, as well as increased benefits for employers through carve-outs.

Carve-outs provide an alternative to the dispute resolution procedures in the state workers' compensation system. Carve-outs were developed to provide the opportunity to establish an improved benefit-delivery system for injured workers and to encourage labor and management to collaborate toward this end. As a result, carve-outs may ensure more efficient responses to safety, dispute rates, and costs. These are benefits for all participants in the workers' compensation system – unions, employers, workers, and workers' compensation administration.

California workers' compensation reform legislation, Senate Bill (SB) 983, first provided for carve-outs in the construction industry and closely related industries. Later legislation, Assembly Bill (AB) 749, provided for carve-outs in the aerospace and timber industries. The most recent legislation, SB 228, repealed AB 749 and provided for carve-outs in all industries other than construction, which is still covered by the initial legislation.

As a result of the recent legislation, CHSWC staff developed a Carve-out Guide to support labor and management through the process of creating a carve-out.

Description

The Guide presents an overview of the role of carve-outs in the California workers' compensation system, including the history of carve-outs and the legislative mandates providing for carve-outs. In addition, the Guide provides an outline of the process for establishing a carve-out and describes the roles and responsibilities of each participant in a carve-out.

The Guide was developed to:

- Help unions, employers, and workers understand the role and benefits of a carve-out in providing workers' compensation benefits.

Carve-out Project Team

Christine Baker
CHSWC

Lach Taylor
CHSWC

Selma Meyerowitz
CHSWC

Irina Nemirovsky
CHSWC

Kirsten Stromberg
CHSWC

Juliann Sum
UC Berkeley, IRR

Contributors

Tom Rankin
California Labor Federation, AFL-CIO

Allen Davenport
SEIU California State Council

Dan Hall, Esq.
Carpenter's Trust

Jay Hansen
State Compensation Insurance Fund

Eric Nobriga
State Compensation Insurance Fund

Richard Robyn
Ombudsperson

CHSWC PROJECTS AND STUDIES

- Identify the steps that unions and employers should take to establish a carve-out.
- Identify ways that unions and employers can work together to create an effective carve-out.

As set forth in Labor Code Sections 3201.5 and 3201.7, unions and employers in construction and other industries are allowed to agree on the following through collective bargaining:

- An alternative dispute resolution process in place of most hearings before a workers' compensation judge.
- An exclusive list of medical providers and medical evaluators.
- An exclusive list of vocational rehabilitation providers.

The statute mandated a number of requirements including:

- That the carve-out process does not diminish compensation to injured workers.
- That the alternative dispute resolution process retains the right to appeal to the Appeals Board and, ultimately, to the state courts of appeal.

Additional sections of the Guide, "The Workers' Compensation Process: Frequently Asked Questions" and "For More Information and Help: A Resource Guide," list resources for members of the workers' compensation community. These resources include governmental agencies, attorneys, health care providers, unions, and support groups, as well as books and materials. These resources can help injured workers understand the workers' compensation system and how to get help with their individual case.

Status

The Guide was completed in 2004.

For further information...



CHSWC Report: "Carve-out: A Guidebook for Unions and Employers in Workers' Compensation" (CHSWC, 2004)



Check out: <http://www.dir.ca.gov/CHSWC/CARVEOUTSGuidebook2004.pdf>

Consolidating and Coordinating Information for Injured Workers

Background

To address substantial gaps in basic information for injured workers in the workers' compensation system, the Commission on Health and Safety and Workers' Compensation (CHSWC) undertook a project to develop prototype educational materials. These materials, consisting of seven Fact Sheets and a videotape, are available to the public and are designed for employers, employee organizations, and any others in the California workers' compensation community.

In 2000, the project team evaluated the usefulness of the Fact Sheets through a review and analysis of oral and written comments from advisory committee members and other interested persons and organizations. The most common recommendation was to consolidate the Fact Sheets into one publication.

Description

CHSWC therefore voted to undertake a new project to build upon its previous work to improve information for injured workers and communications between parties in the workers' compensation system: "Consolidating and Coordinating Information for Injured Workers."

The project involves the design and production, in both English and Spanish, of a prototype guidebook for injured workers based on the Fact Sheets that were completed for CHSWC in 1998 and 2000. The project also involves facilitation of discussions between stakeholders in the workers' compensation community regarding specific methods and activities to improve the usefulness and understandability of the benefit notices that claims administrators send to injured workers about their individual claims.

Results to Date

In collaboration with the Department of Industrial Relations (DIR), the Division of Workers' Compensation (DWC), CHSWC staff, and members of the workers' compensation community, the Labor Occupational Health Program (LOHP) at the University of California Berkeley has produced "Workers' Compensation in California: A Guidebook for Injured Workers." This 70-page guidebook is available to the public and can be downloaded from the websites of the DWC and CHSWC. CHSWC staff and staff of the Institute of Industrial Relations at the University of California Berkeley have sought comments and recommendations from claims administrators, applicants' attorneys, and representatives of labor and legal services organizations on how benefit notices might be simplified and improved.

Status

English version of the Guidebook completed. Spanish version completed.

For further information...



CHSWC Report: "A Guidebook for Injured Workers" (2002)



Check out: <http://www.dir.ca.gov/CHSWC/CHSWCworkercompguidebook.pdf>

MEDICAL CARE

Medical Treatment Study

Background

The strengths and weaknesses of the medical care system for California's injured workers have been documented in studies addressing key dimensions of care: access, cost, utilization, quality, and stakeholder satisfaction. However, the studies were completed prior to the recent enactment of statutory provisions intended to slow the rate of growth in workers' compensation expenditures, and most have focused on particular aspects of medical treatment. With the significant changes that are being made in the California workers' compensation program, a broad-based study is needed that documents the major issues in medical care, discusses the likely implications of the new statutory provisions on incentives to provide high-quality care in an efficient manner, and analyzes the major policy issues that either have not been addressed or are likely to arise as the new legislation is implemented. The issues are complex and addressing them requires an assessment of what can be learned from other workers' compensation programs, non-occupational health insurance programs, and managed care organizations about strategies to improve the efficiency and quality of medical care and how they might be applied to the California workers' compensation program.

Description

Labor Code Section 127.6 of Assembly Bill (AB) 749 requires "the Administrative Director (AD) in consultation with the Commission on Health and Safety and Workers Compensation, the Industrial Medical Council, other state agencies, and researchers and research institutions with expertise in health care delivery and occupational health care service, conduct a study of medical treatment provided to workers who have sustained industrial injuries and illnesses."

In order to meet the above requirements of AB 749, the Commission on Health and Safety and Workers' Compensation (CHSWC) and the Division of Workers' Compensation (DWC) issued a request for proposal (RFP) for a study on medical treatment in December 2003.

Medical Treatment Study Project Team

Barbara Wynn
RAND

Soeren Mattke
RAND

Teryl Nuckols-Scott, MD
RAND

Rebecca Nolind
RAND

Cheryl Damberg
RAND

Yee-Wei Lim
RAND

Michael D. Greenberg
RAND

Giacomo Bergamo
RAND

Project Consultants

Donna Farley
RAND

Allard Dembe, MD
UC Massachusetts, Medical School

Elizabeth McGlynn
RAND

Philip Harber
UCLA

Robert Reville, PhD
RAND

Thomas Wickizer
University of Washington

Francis Trotter
California Arbitration Association

CHSWC and DWC staff

Christine Baker
CHSWC

Andrea Hoch
DWC

Anne Searcy, MD
DWC

Irina Nemirovsky
CHSWC

Kathy Dervin
DWC

CHSWC PROJECTS AND STUDIES

The study focuses on strategies to improve the quality and efficiency of medical services furnished to California injured workers. The RAND analysis clustered its analysis of cost containment and quality issues into five major tasks:

- Identify the most important utilization and cost drivers and quality-related issues affecting medical care provided to California injured workers.
- Analyze best practices in quality-assurance, quality-improvement and cost-containment strategies for applicability in California workers' compensation.
- Evaluate utilization guidelines and make recommendations regarding adoption for the California workers' compensation program.
- Analyze issues related to refinement and expansion of Medicare-based fee schedules.
- Design system for monitoring access, cost and quality.

Status

A final report is expected by June 2005.

CHSWC/DWC Study on Medical Treatment Protocols

Background

The cost of providing medical care to California workers with job injuries and illnesses has been steadily increasing in the past five years, skyrocketing in 2001 and 2002. From 1995 to 2002, workers' compensation medical costs have more than doubled. The rise in medical care expenditures is placing considerable strain on the entire workers' compensation system and prompting policy makers to consider proposals for improving the delivery of workers' compensation medical care in the state.

The high costs for workers' compensation medical care may be due to the fact that the numbers of medical visits in California are much higher than in many other states. According to the Workers' Compensation Research Institute (WCRI), the utilization of medical services in California is over 70 percent greater than other states.

Description

Senate Bill (SB) 228 mandates that the Commission on Health and Safety and Workers' Compensation (CHSWC), on or before July 1, 2004, conduct a survey and evaluation of nationally recognized standards of care, including existing medical treatment utilization standards, including independent medical review, as used in other states, at the national level and in other medical benefit systems.

In addition, SB 228 requires that the Division of Workers' Compensation (DWC) Administrative Director (AD), in consultation with CHSWC, adopt a medical treatment utilization schedule by December 1, 2004.

In order to meet the above requirements of SB 228, CHSWC and the DWC had issued a request for proposal (RFP) for a study on medical treatment protocols in December 2003.

Medical Treatment Protocols Study Project Team

Barbara Wynn
RAND

Teryl Nuckols-Scott, MD
RAND

Soeren Mattke
RAND

Rebecca Nolind
RAND

Yee-Wei Lim
RAND

Cheryl Damberg
RAND

Giacomo Bergamo
RAND

Michael D. Greenberg
RAND

Project Consultants

Donna Farley
RAND

Allard Dembe, MD
UC Massachusetts, Medical School

Elizabeth McGlynn
RAND

Philip Harber
UCLA

Robert Reville, PhD
RAND

Thomas Wickizer
University of Washington

Francis Trottier
California Arbitration Association

CHSWC and DWC staff

Christine Baker
CHSWC

Andrea Hoch
DWC

Anne Searcy, MD
DWC

Irina Nemirovsky
CHSWC

Lach Taylor
CHSWC

CHSWC PROJECTS AND STUDIES

The RFP specified that the Medical Treatment Study, among other issues, will provide an evaluation of utilization review guidelines that might be considered for the California workers' compensation program.

RAND conducted a survey of existing guidelines and provided comparative analysis of guidelines using a variety of measures. The CHSWC/DWC study by RAND followed the steps below in providing an analysis of medical treatment utilization guidelines appropriate for the California workers' compensation system:

- Screen guidelines for consistency with the legislative criteria and features preferred by the Department of Industrial Relations (DIR); guidelines that pass will go on for additional evaluation.
- Use an established guideline appraisal instrument to evaluate the quality of guideline development.
- Assess whether guidelines contain the content required by the legislation, specifically that they "address, at a minimum, the frequency, duration, intensity, and appropriateness of all treatment procedures and modalities commonly performed in workers' compensation cases."
- Convene a multidisciplinary expert panel to assess the clinical validity of the guidelines overall and with regard to the content required by the legislation.
- Convene a stakeholder panel for discussion of the guidelines.

Recommendations

The CHSWC study by RAND offered short-, intermediate-, and long-term recommendations. The main recommendation is that the AD should adopt the American College of Occupational and Environmental Medicine (ACOEM) Guidelines supplemented by the American Association of Orthopedic Surgeons (AAOS) Guidelines for lumbar spinal fusion surgeries. The study also recommended that the state develop a consistent set of utilization criteria to be used by all payors.

In response to the foregoing, CHSWC recommends the following course of action:


- Present RAND report to the AD of the DWC for the AD's consideration
- Recommend consideration of RAND findings in the adoption of medical treatment utilization schedule
- Recommend establishing an ad hoc advisory group, and
- Recommend further studies to be conducted jointly by DWC and CHSWC.


Status


A report on the evaluation of guidelines for use in utilization review was presented in November 2004.

CHSWC PROJECTS AND STUDIES

For further information...

 CHSWC Recommendations to DWC on Workers' Compensation Medical Treatment Guidelines (2004)

 Working Paper: Evaluating Medical Treatment Guideline Sets for Injured Workers in California (RAND, 2004)

 Working Paper: Evaluating Medical Treatment Guideline Sets for Injured Workers in California Executive Summary (RAND, 2004)

 http://www.dir.ca.gov/chswc/CHSWC_Med%20Treat_Nov2004.doc for CHSWC Recommendations.

 http://www.dir.ca.gov/CHSWC/WR-203_111504cd_FINAL.pdf for full report

 http://www.dir.ca.gov/CHSWC/WR-203_ExSum_111504cd_FINAL.pdf for executive summary.

CHSWC Study on 24-Hour Care

Background

Employers in California experience higher costs for workers' compensation claim medical care than employers in most other states, and California ranks highest in workers' compensation claim premium rates. Suggestions have been made to more closely coordinate or combine worker' compensation medical care with the general medical care provided to patients by group health insurers, in order to reduce overall administrative costs and derive other efficiencies in care.

This system of integrating occupational and non-occupational medical and disability systems has been called 24-hour care. In this system, all medical delivery, occupational and non-occupational, would be through the workers' group health provider for the life of the claim or the length of employment.

Similarly, to avoid disputes and litigation over causation for the majority of cases, wage replacement for disability would be under the same arrangement regardless of whether the condition arose out of work or non-occupational cause. The duration of the benefit and the level of benefits could be set the same.

Some of the benefits of 24-hour care could potentially include:

- Streamlined and more cost-effective administration by eliminating duplicative services which result from parallel administrative systems.
- Reduction in costs shifting between insurance systems which could occur from similar wage benefit plans.
- Improved communication among health care providers.

Description

In October 2003, California State Senator Richard Alarcón formally requested that the Commission on Health and Safety and Workers' Compensation (CHSWC) perform an in-depth study of 24-hour care.

CHSWC has contracted with RAND to conduct a study on 24-hour care. The main objectives of the study are to examine the feasibility of implementing a 24-hour care system in California and to determine the cost benefit of such a program.

This project consists of a detailed evaluation of the benefits of 24-hour care and the barriers to implementing such a system.

24-Hour Care Study Project Team

Donna Farley
RAND

Michael Greenberg
RAND

Christopher Nelson
RAND

Seth Seabury
RAND

CHSWC Staff and Consultants

Christine Baker
CHSWC

Lach Taylor
CHSWC

Frank Neuhauser
SRC, UC Berkeley

Irina Nemirovsky
CHSWC

Selma Meyerowitz
CHSWC

CHSWC and RAND conducted focus groups with employers, labor, medical providers, attorneys and state employees to obtain their comments and feedback on this project.

Findings

- It is premature for the state of California to embark on a full-scale statewide introduction of 24-hour care given some of the barriers.
- The State should test alternative approaches to designing a program that manages various legal and operational issues through small-scale 24-hour care pilots.
- In developing the small-scale pilots, interested employers and insurers could work with relevant state agencies.
- Implementation of any carve-out 24-hour care pilot should be accompanied by high-quality evaluation, which includes an implementation and evaluation plan.

Status

Working paper released by RAND in August 2004.

For further information...



RAND Working Paper “Assessment of 24-Hour Care Options for California.”



Check out Special Report on 24-Hour Care in this document.

CHSWC Study on Spinal Surgery Second Opinion Process

Background

Labor Code Section 4062 provides a procedure for a second opinion if the employer objects to the doctor's recommendation for spinal surgery in the workers' compensation system. The employer has 10 days from the receipt of the report to object to the report of the treating physician recommending that spinal surgery be performed.

Description

Section 48 of Senate Bill (SB) 228, part of the workers' compensation reform legislation of 2004, requires that the Commission on Health and Safety and Workers' Compensation (CHSWC) conduct a study of the spinal surgery second opinion procedure and issue a report concerning the findings of the study and recommendations for further legislation.

At its August 19, 2004 meeting, the Commission voted to approve plans for a study to evaluate the second opinion process for spinal surgery in the workers' compensation system. UCLA graduate students under the direction of CHSWC staff and Frank Neuhauser of UC Berkeley are conducting the study.

Preliminary Findings

- Meeting the statutory time frame for objection to the recommendation for spinal surgery appears to be challenging. According to the Division of Workers' Compensation's Medical Unit, from July 1, 2004 through September 20, 2004 about 30 percent of all second opinion requests were returned because they exceeded the 10-day requirement.
- About 25 percent of second opinion requests were returned and therefore denied due to technical issues such as the use of the wrong form, incomplete forms, and/or missing documentation.

Status

The findings of the study are expected to be at the February 2005 CHSWC meeting.

Spinal Surgery Second Opinion Study Project Team

Christine Baker
CHSWC

Frank Neuhauser
UC Berkeley

Irina Nemirovsky
CHSWC

Brenda Welling
UCLA

Lucie Garcia
UCLA

Brianna Luu
UCLA

Note: Data provided by CWC/I

American Medical Association Guides Training Conference

Background

It has been brought to the attention of the Commission on Health and Safety and Workers' Compensation (CHSWC) that there is a critical need to provide training to the medical community and the judges in the workers' compensation community on the American Medical Association (AMA) Guides.

Labor Code 4600, amended by SB 899, requires that the Administrative Director (AD) adopt a revised permanent disability (PD) schedule by January 2005 and that the injury descriptions be based on the AMA Guides.

Currently, there is no standardized training in the workers' compensation community on these Guides. To address this need, CHSWC, the Division of Workers' Compensation (DWC), the California Medical Association (CMA) and the AMA held training sessions on the AMA guides in both northern and southern California in November 2004.

Description

The two-day training session was held on November 4-5, 2004, in southern California and November 8-9, 2004, in northern California. Over 500 attendees in each region participated in each session. Participants included members of the workers' compensation medical community and workers' compensation judges.

Status

Completed.

AMA Guides Training Conference Planning Committee

Christine Baker
CHSWC

Anne Searcy, MD
DWC

Mathew Kremke
AMA

Elizabeth McNeil
CMA

Irina Nemirovsky
CHSWC

Bob Wong
DWC

Janice Yapdiangco
CHSWC

Selma Meyerowitz
CHSWC

Forum on Medical Treatment Guidelines and Workers' Compensation Utilization Protocols

Background

New Labor Code Section 77.5, established by Senate Bill (SB) 228, requires the Commission on Health and Safety and Workers' Compensation (CHSWC) to conduct a survey and evaluation of evidence-based, peer-reviewed, nationally recognized standards of care, including existing medical treatment utilization standards. CHSWC is to issue a report of its findings and recommendations to the Administrative Director (AD) for adoption of a utilization schedule by December 1, 2004.

CHSWC and the Division of Workers' Compensation (DWC) have contracted with RAND for a medical treatment study, and they are currently conducting research on the protocols. At the same time, there is a great interest in the community to understand what the scientific-based, evidence-based protocols are and how their adoption would affect quality, access and cost of care.

In addition, under SB 899, physicians are required to use the American College of Occupational and Environmental Medicine (ACOEM) guidelines for occupational medicine practice. Members of the workers' compensation medical community have expressed concerns that there is a gap in getting the information out to the practicing physician community on what the ACOEM guidelines are, what evidence-based practice is, and how providers need to think about their practice on a daily basis.

Treatment Guidelines and Workers Compensation Utilization Protocol Planning Committee

Christine Baker
CHSWC

Anne Searcy, MD
DWC

Linda Ellwood
COEH

Bob Harrison, MD
UCSF

Irina Nemirovsky
CHSWC

Janice Yapdiangco
CHSWC

Description

To address the above concerns of the workers' compensation community, CHSWC, DWC and the Center for Occupational and Environmental Health (COEH) of the University of California Berkeley will co-sponsor a one-day forum in February 2005 in northern California.

Forum on Terrorism and Disaster Preparedness

Background

In the June 2004 meeting, the members of the Commission on Health and Safety and Workers' Compensation (CHSWC) voted to approve an educational forum on terrorism, national disasters and workers' compensation.

Potential topics for the forum include:

- The risk of terrorism in California.
- Potential cost to workers' compensation in California from terrorist attacks.
- Policy issues related to the Terrorism Risk Insurance Act of 2002.
- Safety and health of emergency responders in terrorist attacks.
- Other states' experiences.
- Worker preparedness for terrorist attacks.

CHSWC is currently exploring funding opportunities for this forum.

Terrorism and Disaster Preparedness Planning Committee

Christine Baker
CHSWC

Irina Nemirovsky
CHSWC

Robert Reville, Ph.D.
RAND

Janice Yapdiangco
CHSWC

Selma Meyerowitz
CHSWC

Description

A one-day forum is expected to be held in 2005 in northern California.

Forum on Best Practices, Integration of Benefits and Carve-outs

Background

In the June 2004 meeting, the members of the Commission on Health and Safety and Workers' Compensation (CHSWC) voted to approve an educational forum on Best Practices, Integration of Benefits and Carve-outs.

Potential topics for the forum include:

- Integration of benefits (24-hour care).
- Carve-outs.
- Return to work and disability management.
- Medical treatment networks.
- Training and safety programs.
- Medical utilization guidelines.

Description

A one-day forum is expected to be held in 2005 in northern California.

***Form on Best Practices,
Integration of Benefits and
Carve-outs Planning Committee***

Christine Baker
CHSWC

Irina Nemirovsky
CHSWC

Janice Yapdiangco
CHSWC

Selma Meyerowitz
CHSWC

Medical Care

State Disability Insurance Integration Project

Background

State Disability Insurance (SDI) makes support payments to people in the labor force who have disabilities resulting from non-work causes that preclude working. Workers' compensation makes support payments to workers who are off work as a result of occupational-related disabilities. Some have observed that there is substantial overlap between these two systems that results in a significant amount of litigation. Also, the systems try to accomplish the same objectives, but the objectives are complicated by the need to parse the cause of disability between occupational and non-occupational origins.

The integration of the two systems into a single seamless system could reduce the costs to both workers and employers while improving outcomes.

Description

In November 2003, Senator Alarcón requested that the Commission on Health and Safety and Workers' Compensation (CHSWC) study the integration of State Disability Insurance (SDI) and workers' compensation temporary disability (TD) insurance.

The recently passed, workers' compensation reform legislation, Senate Bill (SB) 899, for the first time encourages employers to combine occupational and non-occupational medical treatment and indemnity payments. For a number of reasons, this is expected to result in substantial savings to employers, especially in occupational medical costs.

SDI Integration Project Team

Christine Baker
CHSWC

Frank Neuhauser
UC Berkeley

Irina Nemirovsky
CHSWC

The first part of the study will focus on the integration of SDI and workers' compensation TD payments. The study will focus on the following areas:

- The potential benefits derived from integration of two benefit-delivery systems.
- Potential costs and other problems faced by employees, employers and state government.
- Where such an integrated benefit-delivery program might best be housed within state government and/or the private sector.
- A review of the experience of employers and jurisdictions with integrated benefit-delivery systems.

The second part of the study will focus on the integration of non-occupational and occupational medical treatment and will answer the following questions:

- What percentage of health care delivered to the working population is for treatment of occupational injuries?

CHSWC PROJECTS AND STUDIES

- Is there a strong correlation between workers who are uncovered for health insurance and the workers' compensation costs faced by their employers?
- How does the combined cost of occupational and non-occupational medical costs differ by industry and occupation?

The final report would include these areas, as well as estimates of the range of potential subsidies that could accrue to employers if seamless 24-hour medical treatment were adopted. The potential subsidies would be examined by employer size, industry, and current employer-based health-coverage characteristics.

Status

The final report on the integration of SDI and workers' compensation TD benefits is expected to be available in 2005. The final results on the medical treatment integration are expected to be available in March 2005.

Technical Assistance & Contributors

Mary Manderson
Ohio Bureau of Workers' Compensation

Ken Marks
Employment Development Department

Ralph Morgan
Ohio Bureau of Workers' Compensation

Jeanne Nesbit
Iowa Dept. of Human Services

Frank Neuhauser
UC Berkeley

Ann Rezarch
Iowa Dept. of Human Services

Kipp Sonnentag
Wisconsin Dept. of Workforce Development

Alex Swedlow
CWCI

John Tafarella
Employment Development Department

Richard Vancil
Employment Development Department

Pam Wilson
State Controller's Office

CHSWC Issue Papers

CHSWC White Paper on Cost/Benefit of Implementing Electronic Deposit for Unemployment and Disability Benefits in the State of California

Background

Labor Code Section 4651 of Assembly Bill (AB) 749 requires the Commission on Health and Safety and Workers' Compensation (CHSWC) to assist the Administrative Director (AD) in making a report on or before July 1, 2004, that offers recommendations on how to improve farm workers' access to workers' compensation benefits.

In the course of investigation on improving access to workers' compensation benefits, CHSWC staff identified potential areas for administrative savings in implementing an electronic deposit system instead of the current check-writing system for unemployment and disability benefits.

Some of the benefits of moving to an electronic payment system include cost savings, timely delivery of benefits to recipients, elimination of the problem of checks being lost in the mail, and potential for reduced fraud.

Description

The issue paper proposes ways to improve administrative efficiency and reduce the transaction costs of processing paper checks for the payment of unemployment and disability benefits in the State of California.

Staff also conducted a preliminary review of California administrative systems with the potential of administrative savings by adopting electronic deposit and/or EBT.

CHSWC staff have contacted and worked with the Employment Development Department (EDD), the State Controller's Office, the Division of Workers' Compensation (DWC), the State Compensation Insurance Fund (SCIF), the California Workers Compensation Institute (CWCI), and the states of Ohio, Iowa and Wisconsin. Additional contacts were made with Federal government benefit programs.

The paper indicates that over \$2.8 billion of administrative savings could be achieved by:

- Utilizing electronic deposit by mandating that it be offered by payors to payees in lieu of paper check disbursements.
- Utilizing electronic benefit transfer cards (EBT) for un-banked recipients.

These efficiencies could be used for unemployment insurance (UI), state disability insurance (SDI), workers' compensation, non-industrial disability insurance (NDI), uninsured employers, and other administrative systems.

Status

A draft issue paper was prepared in August 2004.

Project Team

Christine Baker
CHSWC

Lach Taylor
CHSWC

Irina Nemirovsky
CHSWC

Juliann Sum
UC Berkeley

Technical Assistance & Contributors

Dorothy Cotrill
Ohio State Controller's Office

Barbara Ernst
Employment Development
Department

George Fisher
Dept of Health & Human
Services

Jon Haught
Dept of Health & Human
Services

Brian Krueger
Wisconsin Dept. of Workforce
Development

Mark Lowder
Employment Development
Department

California Insurance Guarantee Association Issue Paper

Background

The California Insurance Guarantee Association (CIGA) was established in 1969 to administer and pay the “covered claims” of insolvent property and casualty insurance carriers. CIGA obtains the funds to pay its covered claims through assessments charged to member companies. CIGA’s assessments are based on the amount of net written premiums paid by employers. To the extent that the net written premium is reduced by large deductibles, the CIGA collections from assessments are also reduced. In May 2004, the Commission on Health and Safety and Workers’ Compensation (CHSWC) Chair Tom Rankin requested that CHSWC examine the issue of CIGA and high-deductible policies.

Description

In response to Chair Rankin’s request, CHSWC staff prepared a paper whose goal was to look at how to reduce the long-term cost of CIGA assessments and to spread these costs equitably among large and small employers.

CHSWC’s proposal in the background paper would end the practice of shifting disproportionate CIGA costs onto smaller employers, and it would enable CIGA to meet its obligations with less reliance on costly bond financing.

CHSWC’s Recommendation

CHSWC recommends that the Legislature consider reviewing the potential for CIGA to assess all employers according to the amount of their premiums before any credit or reduction for large deductible. In addition, CIGA would not be responsible for penalties for late medical bills of insolvent insurers.

Status

The draft background paper was approved in June 2004. CHSWC continues to examine this issue.

Project Team

Christine Baker
CHSWC

Lach Taylor
CHSWC

Irina Nemirovsky
CHSWC

Technical Assistance & Contributors

Larry Mulryan
CIGA

Richard Hurd
CIGA

Michael Nolan
CWCI

David Bellusci
WCIRB

Study of Labor Code Section 132a

Background

Commissioner John C. Wilson requested that the Commission on Health and Safety and Workers' Compensation (CHSWC) consider a study of the interaction of Labor Code Section 132a and the termination of health insurance benefits in the context of school district employees on long-term disability status.

Description

At the February 2002 meeting, CHSWC decided to explore whether stopping medical benefits according to statute, union contract, or company policy violates California Labor Code Section 132a.

CHSWC issued a "call for information" to obtain more background information from the workers' compensation community.

At the August 2003 meeting, Judge Joel Gomberg reported that a Supreme Court decision (Lauher 2003) relevant to the case had been recently issued which determined that in order to establish the case of a violation of Labor Code section 132A, an employee must establish not only that the employer engaged in detrimental conduct, but also that the employee was subjected to differential treatment as a result of his or her industrial injury.

The Supreme Court case makes it fairly clear that in the future, the courts will find that if there is no differential impact, the termination of health insurance benefits to injured workers will not be held in violation of Labor Code Section 132 (a).

Status

The CHSWC staff memo "Update on Labor Code Section 132(a) and Employer Termination of Health Insurance Coverage: *California Supreme Court Decision in State of California, Department of Rehabilitation v. WCAB (Lauher)* " was released in August 2003.

For further information...



CHSWC Memo: "Update on Labor Code Section 132(a) and Employer Termination of Health Insurance Coverage: *California Supreme Court Decision in State of California, Department of Rehabilitation v. WCAB (Lauher)*" (2003)



Check out: <http://www.dir.ca.gov/CHSWC/>

CHSWC AND THE COMMUNITY

For Information about CHSWC and its Activities

Write:

California Commission on Health and Safety and Workers' Compensation
1515 Clay Street, Room 901
Oakland, CA 94612

Phone:

510-622-3959

FAX:

510-622-3265

E-mail:

chswc@dir.ca.gov

Internet:

Check out www.dir.ca.gov/chswc for:

- What's New
- Reports of CHSWC studies, issue papers and projects.
- News releases.
- CHSWC meeting schedules and minutes.
- DIR young workers website.
- Educational materials, fact sheets, video.
- State, national and international safety and health training programs and resources.
- Worker Occupational Safety and Health Training and Education Program (WOSHTEP)

CHSWC Publications

In addition to the many reports listed in the CHSWC Projects and Studies section of this report, CHSWC has published:

CHSWC Annual Reports
1994 through 2004
CHSWC Strategic Plan 2002

Community Activities

The Commission on Health and Safety and Workers' Compensation (CHSWC) is pleased to report that its members and staff have had the privilege of participating in several activities of the health and safety and workers' compensation community.

ABD Insurance & Financial Services

Executive Officer presentation

American College of Occupational and Environmental Medicine

Executive Officer orientation

American Insurance Association

Executive Officer presentation

Association of Workers' Compensation Professionals

Annual seminar
Executive Officer presentation

Bragg and Associates

Update on Workers' Compensation Seminar
Executive Officer presentation

California Cast Metals Association

CHSWC staff presentation

California Coalition on Workers' Compensation

Spring Legislative Conference
2nd Annual Fall Conference
Executive Officer presentation

California Department of Industrial Relations

Division of Workers' Compensation Annual Educational Conference
Executive Officer presentation

California Employer Advisory Council

Executive Officer presentation

California State Association of Occupational Health Nurses

Annual conference
Executive Officer presentation

California Legislature

Assembly Member Dario Frommer
Assembly Member Juan Vargas
Senator Jackie Speier
Senator Charles Poochigian
Senator Tom Torlakson

Catholic Healthcare West

Advisory Committee

California Workers' Compensation Institute

Workers' Compensation Reforms Seminar on SB 899

Center for Occupational and Environmental Health, University of California, Berkeley

Promoting Primary Prevention in the California Workers' Compensation System
The Way We Work and Its Impact on Our Health
CHSWC staff participation

Centers on Occupational & Environmental Health

Statewide Advisory Committee

Southern California Council of Self-Insurers, Professional Advancement Kammerer & Co.

Navigating the California Workers' Compensation Reform Storm Conference
Executive Officer presentation

Golden Gate Underwriters

CHSWC staff presentation

International Association of Industrial Accident Boards and Commissions

90th Annual Convention

Executive Officer Serves as Chair of the IAIABC Prevention, Benefit Adequacy and Cost Containment Prevention and Safety Committee

International Business Forum

The Workers' Compensation and Disability Management Conference
Executive Officer presentation

Los Angeles County Bar Association

Healthcare Law Section Program
Executive Officer and CHSWC staff presentation

National Academy of Social Science

Advisory Steering Committee
Executive Officer attended as a member

National Institute of Occupational Safety and Health

3rd National Occupational Injury Research Symposium
CHSWC staff participation

Newport Urgent Care Medical Facility

Open House
Executive Officer presentation

Northern California Painting and Finishing Contractors

3rd Annual Labor/Management Update
Executive Officer presentation

Risk and Insurance Management Society, Inc.

Executive Officer presentation

San Diego Employer Advisory Council

Workplace 2004
CHSWC staff presentation

Strategic Business Solutions

Strategic Business Strategies Seminar
CHSWC staff presentation

Southern California Council of Self-Insurers

Executive Officer presentation

The Communications Institute

Health Care in California: Confronting the Future
CHSWC staff participation

CHSWC AND THE COMMUNITY

Voluntary Protection Program Association

2004 Region IX Application Workshop and Networking Conference
CHSWC staff presentation

Western Occupational Safety and Health Group

Advisory Committee Meeting
Executive Officer presentation

Workers' Compensation Research Institute

Annual Issues and Research Conference

Workers' Compensation Research Group

Advisory Group meeting

CHSWC Awards

The Commission on Health and Safety and Workers' Compensation (CHSWC) was presented the International Association of Industrial Accident Boards and Commissions (IAIABC)/Workers' Compensation Research Institute (WCRI) 2003 Workers' Compensation Research Award for its Medical Payment Systems Study. The award honored "the best workers' compensation agency research product using data and analysis to answer an important public policy question of national interest."

Acknowledgements

The Commission on Health and Safety and Workers' Compensation (CHSWC) is pleased to acknowledge and thank the following individuals and organizations from the California health, safety and workers' compensation communities.

Their willingness to share the insight and knowledge derived from their years of experience has assisted CHSWC immeasurably in its mission to oversee and recommend improvements in the workers' compensation and health and safety programs in California.

Alliance of American Insurers (AAI)

Peter Gorman

American Insurance Group (AIG)

Mark Webb

American Medical Association (AMA)

Matthew Kremke, Manager, Healthcare Education and Consulting Services
Debra Kennedy, Customer Relations Manager

Association of Injured Workers

Charles Bruscino

Boston University

Leslie I. Boden, Ph.D., Professor, School of Public Health

California Applicants' Attorneys Association (CAAA)

Arthur V. Azevedo, President
David Schwartz, President-elect
Mark Gerlach, Esq.
Doug Kim, Esq.
Lloyd Rowe, Esq.
Frank D. Russo, Esq.
Peggy Sugarman, Consultant

California Association of Rehabilitation and Reemployment Professionals (CARRP)

Jim Gross, Lobbyist

California Chamber of Commerce (CCC)

CHSWC AND THE COMMUNITY

Charles Bacchi, Legislative Advocate

California Coalition on Workers' Compensation (CCWC)

Scott Lipton, Managing Director

California Department of Industrial Relations (DIR)

John Rea, Acting Director

Dean Fryer, CAL/OSHA Spokesman

Susan Gard, CAL/OSHA Spokesperson

Office of the Director staff

California Department of Insurance (DOI and/or CDI)

John Garamendi, Insurance Commissioner

Ida Zodrow, Assistant Chief Deputy, Operations Branch

Larry White, Senior Staff Counsel

Andrea Biren, Chief Administrative Law Judge

CDI staff

California Employment Development Department (EDD)

Patrick W. Henning, Director

EDD staff

California Insurance Guarantee Association (CIGA)

Larry Mulryan, Executive Director

California Labor and Workforce Development Agency (LWDA)

Victoria L. Bradshaw, Secretary

Jehan Flagg, Deputy Director of Communications

California Labor Federation, AFL-CIO

Angie Wei, Legislative Director

California Legislature

The Honorable John Burton, President Pro Tempore, California Senate

The Honorable Richard Alarcón, Chair, Senate Labor & Industrial Relations Committee

The Honorable Charles Poochigian, Chair, Senate Republican Caucus

Assembly Member Dario Frommer

Assembly Member Rick Keene

Assembly Member Juan Vargas

The Honorable Jackie Speier, Chair, Insurance Committee

The Honorable Tom Torlakson, Chair, Local Government Committee

Don Moulds, Consultant, Senate Office of Policy

Francis Low, Consultant, Senate Labor & Industrial Relations Committee

Rodger Dillon, Consultant, Senate Labor & Industrial Relations Committee

Mark Sektnan, Chief Consultant, Assembly Insurance Committee

California Manufacturers and Technology Association (CMTA)

Jack M. Stewart, President

Willie Washington, Legislative Director, Human Resources,

Workers' Compensation Safety and Health

CHSWC AND THE COMMUNITY

California Medical Association (CMA)

Elizabeth McNeil, Director of Federal Issues and Workers' Compensation Advocacy

California Orthopedic Association (COA)

Diane Przepiorski, Director

California Physical Therapists

Patricia Sinnott, PT, MPH

California Self-insurers Association (CSIA)

Susan Wright, Executive Director

California Society of Industrial Medicine and Surgery (CSIMS)

Carlyle R. Brakensiek, Executive Vice President

California Workers' Compensation Defense Attorneys Association (CWCDAA)

Philip E. Dunn, Jr., President

California Workers' Compensation Institute (CWCI)

Michael Nolan, President

Richard B. Anderson, Executive Vice President

Rea B. Crane, Medical Rehabilitation Director

Michael J. McClain, General Counsel

Mark Miller, Research Associate

Alex Swedlow, Executive Vice president, Research and Development

Robert Young, Communications Director

Perla Medrano, Administrative Assistant

Centers for Medicare and Medicaid Services (CMS)

Robert A. Cereghino

Bob Ulikowski, California Regional Office of CMS

Chuck Braver

Division of Administration (DOA)

Ann Rose, Acting Chief

Kären Dickerson, Budget Officer

Angela Michael, Budget Analyst

DOA staff

Division of Apprenticeship Standards (DAS)

DAS staff

Division of Labor Standards & Enforcement (DLSE)

DLSE staff

Division of Labor Statistics & Research (DLSR)

DLSR staff

Division of Occupational Safety & Health (DOSH)

Len Welsh, Acting Chief

DOSH staff

Division of Workers' Compensation (DWC)

Andrea Hoch, Administrative Director
Kenneth Peterson, Associate Chief Judge
Mark Kahn, Associate Chief Judge
Anne Searcy, MD, Associate Medical Director
Otis Byrd, Rehabilitation Manager
Kathy Dervin, Health Education Consultant III
Blair Megowan, Disability Evaluation Manager
William Kahley, Research Unit Manager
Robert Kutz, Presiding Judge
Jackie Schauer, Industrial Relations Counsel III
Robert Walensa, Audit Unit Manager
Bob Wong, Information & Assistance Manager
Carrie Nevans, Chief of Administration
DWC staff

East Bay Repetitive Stress Injuries (RSI) Support Group

Joan Lichterman
Bruce Wolfe

East San Jose Community Law Center

Grancell, Lebovitz, Stander, Marx and Barnes

Nona Grancell
Norin Grancell

Hewlett Packard Corporation

Mary E. Garry

Information Systems Unit (IS)

Jim Culbeaux, Chief Information Technology Officer
Jack Chu, Senior Programmer, Supervisor
Arthur Tunik, Web Group
Russ Roeckel, IDMS
Daniela Giomi, Web Group
Jesse Gomez, Technical Support
IS staff

International Association of Industrial Accident Boards and Commissions (IAIABC)

Gregory Krohm, Executive Director
IAIABC staff

Kaiser Permanente

Doug Benner, MD, Coordinator of Occupational Health
Bernyce Peplowski, DO, Coordinating Chief, Southern California Permanente
Medical Group

Law Office of Barry Broad

Barry Broad, Esq.
Libby Sanchez, Esq.

Liberty Mutual Insurance

Barry Hoschek, Division Manager

Marin Association of Public Employees, SEIU 949

Josie Jenkins

Members of the Public

Participants in CHSWC meetings, fact-finding hearings and public forums
Participants in CHSWC project advisory committees

National Institute of Occupational Safety and Health (NIOSH)

John Howard, MD, Director

Occupational Safety and Health Standards Board (OSHSB)

Office of Self-insurance Plans (SIP)

Mark Johnson, Manager
SIP staff

Office of Statewide Health Planning and Development (OSHPD)

Ginger Cox
Irene Ogbonna
Jim Winter

RAND

Robert T. Reville, PhD, Director for Civil Justice
Donna Farley, Senior Health Policy Analyst
Barbara Wynn, Senior Scientist
Nicholas M. Pace, Resident Consultant
Teryl Nuckols-Scott, M.D., M.S.H.S.
Seth Seabury, Associate Economist

Rutgers University

John F. Burton, Jr., Ph.D., Professor, School of Management & Labor Relations

San Francisco State University (SFSU)

Zoe Cardoza Clayson, Professor
Ramon Castellblanch, Assistant Professor

State Compensation Insurance Fund (SCIF)

Dianne C. Oki, President
Jim Neary, Executive Vice President
Jim Tudor, Executive Vice President
Donna Gallagher, Manager, Anti-fraud Program
Gideon Letz, Medical Director
Lisa Middleton, Manager, Claims Rehabilitation
Pat Quintana, Government Relations Officer
Lauren Mayfield, Manager, Safety and Health Services

University of California Berkeley (UCB)

Frank Neuhauser, Project Director, UC Data/Survey Research Center (SRC)
Robin Baker, Director, Labor Occupational Health Program (LOHP)
Chris Benner, Ph.D., Institute of Industrial Relations (IIR)
Diane Bush, Program Coordinator, LOHP
Leilani Buddenhagen, Young Worker Project, LOHP
Elaine El-Askari, Program Coordinator, LOHP
James Meyers, Agricultural Health Specialist, Center for Occupational & Environmental Health (COEH)
Barbara Plog, MPH, Program Director Continuing Professional Education, COEH
Robert C. Spear, Ph.D., Director, COEH
Laura Stock, Associate Director, LOHP
Juliann Sum, Esq., LOHP
Betty Szudy, Program Coordinator, LOHP
Suzanne Teran, MPH, Program Coordinator, LOHP
Support staff

University of California Los Angeles (UCLA)

Gerald Kominski, Ph.D., Associate Director, Center for Health Policy Research
Laurie Kominski, Acting Director, Labor Occupational Safety and Health (LOSH) Program
Claudia Molina, Project Director, Cal Education & Research Center, UCLA
Jeimy Gama, Support staff

University of Massachusetts Medical School

Jay S. Himmelstein, MD., MPH, Program Director
Allard E. Dembe, Sc.D., Associate Professor and senior Research Scientist

Workers' Compensation Appeals Board (WCAB)

Merle Rabine, Chairman
Frank M. Brass, Commissioner
Ronnie Caplane, Commissioner
James C. Cuneo, Commissioner
Janice Murray, Commissioner
William K. O'Brien, Commissioner
A. John Shimmon, Commissioner
Dennis J. Hannigan, Secretary
Rick Dietrich, Assistant Secretary
WCAB staff

Workers' Compensation Insurance Rating Bureau of California (WCIRB)

Robert G. Mike, President
David Bellusci, Senior Vice President and Chief Actuary

Workers' Compensation Research Institute (WCRI)

Richard A. Victor, JD, Ph.D., Executive Director
WCRI staff

Special thanks to the following members of the workers' compensation community for their support:

Senator Jackie Speier
Insurance Commissioner John Garamendi
California Self Insurers Security Fund
National Academy of Social Insurance
ORC Worldwide
California Self-Insurers Association
California Coalition on Workers' Compensation
San Francisco Small Business Advocates
California Labor Federation
State Building and Construction Trades Council of California
California Teamsters Public Affairs Council
Law Offices of Barry Broad
American Federation of Labor and Congress of Industrial Organizations
California Correctional Peace Officers Association
W.E. Upjohn Institute for Employment Research
Virginia Employment Commission
University of Connecticut
Garment Worker Center
Concentra
Kammerer & Company
Medex Healthcare
Philip M. Vermeulen
Beyond Insurance
Acclamation Insurance Management Services
Jopari Solutions Inc.
CID Management
CompPartners
Bickmore Risk Services
St. Joseph Health System
The Henderson Insurance Agency
Southern California Association of Occupational Health Nurses
International Association of industrial Boards and Commissions

CHSWC AND THE COMMUNITY

Workers' Compensation Insurance Rating Bureau
Disability Management Insights
New Method Floor Co, Inc.

Special appreciation to injured workers and employers in the system who have come forward to suggest improvements to the system and provide insights and comments.

Finally, CHSWC would like to acknowledge and thank its staff:

Christine Baker, Executive Officer
D. Lachlan Taylor, Workers' Compensation Judge
Kirsten Strömberg, Research Program Specialist II
Irina Nemirovsky, Research Program Specialist II
Brooke Nagle, Associate Governmental Program Analyst
Janice R. Yapdiangco, Associate Governmental Program Analyst
Selma Meyerowitz, Associate Governmental Program Analyst
Olivia A. Vela, Staff Services Analyst
Chellah A. Yanga, Office Assistant

Charles L. Swezey, Industrial Relations Counsel, Legal Consultant